

APPLICATION FOR NOMINATION TO JUDICIAL OFFICE

**SECTION I: PUBLIC INFORMATION (QUESTIONS 1
THROUGH 71)**

PERSONAL INFORMATION

1. Full Name: **David Bruce Gass**
2. Have you ever used or been known by any other name? **Yes.** If so, state name:
Dave Gass and David B. Gass
3. Office Address:
**Maricopa County Superior Court
Juvenile Court, South East Facility
1810 South Lewis, Suite 1094
Mesa, AZ 85210**
4. How long have you lived in Arizona? **30 years**
What is your home zip code? **85041**
5. Identify the county you reside in and the years of your residency.
Maricopa County for 30 years (May 8, 1989 to present)
6. If nominated, will you be 30 years old before taking office? **Yes.**
If nominated, will you be younger than age 65 at the time the nomination is sent to the Governor? **Yes.**
7. List your present and any former political party registrations and approximate dates of each:
 - **Maricopa County, Arizona: 1992 to present (Democrat)**
 - **Northumberland County, Pennsylvania: Early 1980s to 1989 (Republican)**(The Arizona Constitution, Article VI, § 37, requires that not all nominees sent to the Governor be of the same political affiliation.)
8. Gender: **Male**
Race/Ethnicity: **Caucasian/Anglo-Saxon**

EDUCATIONAL BACKGROUND

9. List names and locations of all post-secondary schools attended and any degrees received.

National Judicial College, University of Nevada, Reno:

- I completed two classes, including advanced evidence and advanced judicial writing.
- I am not enrolled in a degree program, but the above classes can count toward a degree.

Arizona State University College of Law:
(Now Sandra Day O'Connor College of Law)

- **Degree:** Juris Doctorate, 1994
- **GPA:** 89.44, *Magna Cum Laude*

Bloomsburg University of Pennsylvania:

- **Degree:** Master of Arts in Communication Studies, 1985
- **GPA:** 4.0

Bloomsburg University of Pennsylvania:

- **Degree:** Bachelor of Science in Business Administration, 1984
- **GPA:** 3.75, *Magna Cum Laude*

I always complete far more continuing legal education than required. I look for opportunities to learn, whether I am earning credit toward a degree or not. For example, I take seminars through the Judicial Education Program at the Law and Economics Center in the Antonin Scalia School of Law at George Mason University. These and similar programs do not count toward a degree, but they provide invaluable insight.

10. List major and minor fields of study and extracurricular activities.

Juris Doctorate:

- **Extracurricular Activities:**
 - Arizona State Law Journal
 - Environmental Law Students Association
 - Homeless Legal Assistance Project
 - Asian Law Students Association

Master of Arts in Communication Studies:

- **Major Field of Study:** Organizational Communications
- **Extracurricular Activities:**
 - Coached Competitive Speech and Debate Team
 - Team ranked 16th at National Competition

Bachelor of Science in Business Administration:

- **Major Field of Study:** Business Administration and Marketing
- **Extracurricular Activities:**
 - Competitive Speech and Debate Team

11. List scholarships, awards, honors, citations and any other factors (e.g., employment) you consider relevant to your performance during college and law school.

Juris Doctorate:

- G.P.A.: 89.44 (8th in class)
- Graduated *Magna Cum Laude*
- Order of the Coif
- Managing Editor, Arizona State Law Journal
- Pedrick Scholar
- Finalist (2nd Place) Arizona Association of Defense Counsel Closing Argument Competition
- Legal Writing Instructor for the first-year writing program
- Legal Assistant for Marianne Moody Jennings
- Co-authored a published article with Marianne Moody Jennings (*Property Damage Is an Emotional Experience*, 23 Real Estate L.J. 123 (Fall 1994))

Master of Arts in Communication Studies:

- G.P.A.: 4.00
- Graduate Assistant:
 - Taught mostly undergraduate and some graduate classes on public speaking
 - Coached a competitive speech and debate team (Team ranked 16th at Pi Kappa Delta National Competition)

Bachelor of Science in Business Administration:

- G.P.A.: 3.75
- Graduated *Magna Cum Laude*
- Dean's List
- Pi Kappa Delta: Speech and Debate Honor Society
- Phi Kappa Phi: Academic Honor Society
- Won many awards at competitive speech and debate tournaments, which I attended on weekends while maintaining a full class schedule and working at ACME Markets
- Worked at ACME Markets 25 to 29.5 hours a week to pay my own tuition and expenses

PROFESSIONAL BACKGROUND AND EXPERIENCE

12. List all courts in which you have been admitted to the practice of law with dates of admission. Give the same information for any administrative bodies that require special admission to practice.
- **Supreme Court of the United States (Admitted 2010)**
 - **United States Court of Appeals for the Ninth Circuit (Admitted 1998)**
 - **United States District Court for the District of Arizona (Admitted 1994)**
 - **State Bar of Arizona (Admitted 1994)**
13. a. Have you ever been denied admission to the bar of any state due to failure to pass the character and fitness screening? **No.**
- b. Have you ever had to take a bar examination more than once in order to be admitted to the bar of any state? **No.**

14. Describe your employment history since completing your undergraduate degree. List your current position first. If you have not been employed continuously since completing your undergraduate degree, describe what you did during any periods of unemployment or other professional inactivity in excess of three months. Do not attach a resume.

<u>EMPLOYER</u>	<u>DATES</u>	<u>LOCATION</u>
Maricopa County Superior Court	2/2009 -present	Phoenix, AZ and Mesa, AZ
Arizona Attorney General's Office	9/2007 -1/2009	Phoenix, AZ
Arizona House of Representatives	1/2001 -9/2007	Phoenix, AZ
Lewis and Roca, LLP (now Lewis Roca Rothgerber Christie)	9/1995 -1/2001	Phoenix, AZ
Arizona Court of Appeals, Division One (Hon. Ruth V. McGregor)	8/1994 -8/1995	Phoenix, AZ
Marianne Moody Jennings (Research Assistant)	5/1992 -5/1994	Tempe, AZ
Intermittent and part-time employment (Attended law school and studied for the Arizona bar exam)	8/1991 -7/1994	Tempe, AZ
Prudential Property & Casualty Insurance Company	1987-1991 Sum. 1992	Marlton, NJ and Scottsdale, AZ
DialAmerica Marketing	1986-1987	Broomall, PA
Bloomsburg University (Graduate Teaching Assistant and Speech/Debate Coach)	1985	Bloomsburg, PA

15. List your law partners and associates, if any, within the last five years. You may attach a firm letterhead or other printed list. Applicants who are judges or commissioners should additionally attach a list of judges or commissioners currently on the bench in the court in which they serve.
- **Attachment A: Judges, Maricopa County Superior Court**
 - **Attachment B: Commissioners, Maricopa County Superior Court**
16. Describe the nature of your law practice over the last five years, listing the major areas of law in which you practiced and the percentage each constituted of your total practice. If you have been a judge or commissioner for the last five years, describe the nature of your law practice before your appointment to the bench.

From September, 2007 to February, 2009:

I served as an Assistant Attorney General and Director of Legislative Affairs at the Office of the Arizona Attorney General. My practice focused on legislative and constitutional issues. I drafted legislation and worked to ensure its introduction and passage. I testified in committees to explain legislation and to answer questions. I provide examples of the legislation in response to Question 18 below.

I met with legislators and stakeholders to address their concerns. I worked on community issues. I organized a crime summit to address issues in South Phoenix. I was the keynote speaker on elder abuse at Arizona's 2008 Break the Silence annual event at the Arizona Capitol.

As a member of the Attorney General's Opinion Review Committee, I assisted with drafting Attorney General Opinions. I also appeared in and litigated election law cases on behalf of the Arizona Secretary of State. As the Attorney General's designated public lobbyist, I ensured compliance with lobbying and other laws.

From January, 2001 to September, 2007:

I served as Counsel to the Democratic Caucus at the Arizona House of Representatives. I worked with legislators, staff members, and the public to draft thousands of bills and amendments. Some involved technical changes, such as reorganizing and renumbering Arizona's criminal code. Others involved important and sweeping changes to Arizona law, such as revising Arizona's capital sentencing scheme to allow for jury sentencing.

I reviewed all bills moving through the Arizona Legislature for constitutionality and proper form. I developed an expertise in

researching legislative history and drafting legislation. My work at the Arizona Legislature gave me a deep and abiding respect for the legislative process.

From October, 1995 to January, 2001:

I was in private practice. I litigated in state and federal trial and appellate courts. In my responses to questions 26, 27, and 28 below, I highlight some cases typical of those I handled.

My private practice generally consisted of the following:

- **Tort and Commercial Litigation:** 45%

I typically defended insureds who were sued by a third party.

- **Insurance Coverage and Bad Faith Defense:** 35%

I typically represented insurers who were sued by an insured.

- **Real Estate Transactions:** 15%

I negotiated purchase and sale agreements for large commercial properties, such as shopping malls and apartment complexes. I negotiated commercial leases.

- **Guardianships/Conservatorships/Injunctions Against Harassment and Protective Orders:** 4%

I represented insurers to secure court approval of settlements involving minors and incapacitated adults. I secured injunctions and protective orders for high profile clients and for employers and their employees.

- **Fair Labor Standard Act (FLSA):** 1%

I represented employers at all stages of alleged FLSA violations, from Department of Labor investigations through litigation.

From August 1994 through August 1995:

I was a law clerk for the Hon. Ruth V. McGregor. I discuss my clerkship in detail in response to Question 25 below.

17. List other areas of law in which you have practiced.

From January, 2009 to present:

I have served as a Maricopa County Superior Court Judge. I have presided over cases on all four major assignments:

- **Juvenile Assignment (July 2018 to present);**
- **Civil Assignment (July 2015 to June 2018);**
- **Criminal Assignment (July 2012 to June 2015); and**
- **Family Assignment (February 2009 to June 2012) and Associate Presiding Family Court Judge Southeast (June 2011 to June 2012).**

Each assignment involved a distinct area of law. My work before joining the Maricopa County Superior Court allowed me to feel comfortable handling each. During my early career, my private practice focused on civil law. Later, at the Arizona House of Representatives, I worked on statutes in nearly every title, including juvenile law, criminal law, and family law. I have a deep understanding of Arizona's laws and a strong commitment to honoring those laws.

- **Juvenile Law: I worked on statutes and issues involving dependencies and child sex trafficking. I used this background to take on more complex cases when juveniles are dual wards because they are involved in both a delinquency and a dependency. I quickly began developing ways to help some of our most vulnerable youths, juvenile victims of sex trafficking.**
- **Civil Law: My private practice experience gave me a strong civil background. Because I worked in insurance claims before I went to law school, I understood and appreciated the civil justice system long before I became a lawyer.**
- **Criminal Law: By the time I joined the bench, I was well versed in Arizona's criminal code. As counsel at the Arizona House of Representatives, I reviewed each criminal statute when the Arizona Legislature reorganized and renumbered the code. I understood aggravating factors and mitigating circumstances. I**

worked on changes to Arizona's capital sentencing statutes to allow for jury sentencing. I put that experience to use when I presided over a petition for post-conviction relief in a capital murder case, *State v. Harrod*, CR 1995-009046. I found no basis to grant relief and, on March 6, 2017, the Supreme Court of the United States denied Mr. Harrod's Petition for writ of certiorari. Consequently, my ruling stands.

- **Family Law:** I worked on issues and statutes related to custody (now legal decision making), parenting time, and child support. I met with stakeholders and legislators so that I understood how those laws affect Arizona's families.

My professional experiences allowed me to recognize and assess the nuances in the cases before me, but I continue to learn every day. On each assignment, I have looked for and I continue to look for ways to better serve our citizens.

- **Juvenile Assignment:** Judge Pamela Svoboda and I are working with others to develop a multidisciplinary approach to work with victims of child sex trafficking. We work with victims to ensure the juvenile court serves their needs. I rebuilt a cross-over calendar for dual wards to ensure they get the services they need efficiently and without duplication.
- **Civil Assignment:** I served on the State Bar of Arizona Civil Jury Instructions Committee. I discuss my work on the Committee in greater detail in my response to Question 19 below.
- **Criminal Assignment:** I worked with the clerk of court's office to develop a spreadsheet to use in multi-count criminal cases. This spreadsheet allows the Arizona Department of Corrections and others to understand complicated sentences involving a mix of consecutive and concurrent sentences, as well as flat-time sentences versus sentences eligible for some form of early release.
- **Family Assignment:** I worked with Judge Bruce Cohen to develop templates that provide a comprehensive framework for judges to use in family law cases. I discuss my work on the templates in my response to Question 19 below.

18. Identify all areas of specialization for which you have been granted certification by the State Bar of Arizona or a bar organization in any other state.

Not Applicable.

19. Describe your experience as it relates to negotiating and drafting important legal documents, statutes and/or rules.

Judicial Rulings and Court Orders:

For more than ten years, I have served as a full-time Judge on the Maricopa County Superior Court, sitting on juvenile, civil, criminal, and family assignments. I have made thousands of rulings and written thousands of orders, from simple minute entries to complex decisions.

Family Law Templates:

While on the family law assignment, Judge Bruce Cohen and I saw a need to help colleagues around Arizona who were unfamiliar with family law. Our goal was to ensure judges understood the law and applied it in a fair and efficient manner. We developed more than thirty comprehensive templates to identify the major issues, the law, and each factor a judge must consider when making a decision affecting Arizona's families and children. The templates were well received, and judges continue to use them.

Annually, Judge Bruce Cohen and Judge Suzanne Cohen (no relation) and I teach family law at the Arizona Supreme Court's New Judge Orientation. We educate new judges about family law issues and the templates. We have received the highest ratings possible for our sessions.

Jury Instructions:

I served on the State Bar of Arizona Civil Jury Instructions Committee. The Committee proposes updates to the Revised Arizona Jury Instructions (RAJI) for civil cases. I proposed instructions to streamline cases when the only issue is damages. Another committee member, Steve Kramer, and I drafted the instructions. Early in 2017, the Committee approved the proposed jury instructions. In April, 2017, the State Bar of Arizona Rules Committee approved them for inclusion in the RAJI. I also prepared and proposed improvements to other general instructions, which are still moving through the approval process.

Constitutional Amendments, Statutes, and Legislative Rules:

I had the unique experience of negotiating, drafting, and amending thousands of statutes over nine legislative sessions. I worked well with all legislators, partisan and non-partisan staff, as well as stakeholders, to ensure the bills contained no substantive flaws regardless of policy views. Perhaps the most significant legislation on which I worked was Arizona's capital sentencing laws. Arizona had to revise its laws in response to the *Ring v. Arizona* opinion from the Supreme Court of the United States.

When I joined the Attorney General's Office, I continued working on legislation, including the following:

Identity Theft Protections for Consumers:

- **Factual Innocence:** In criminal cases, allows a court to find a victim of identity theft "factually innocent" of a crime if another person was arrested for, cited for, charged with, or convicted of a crime while using a stolen identity. Session Laws ch. 237 (Ariz. 2008, 2nd Reg. Session).
- **Factual Improper Party:** In civil cases, allows a court to find a victim of identity theft is a "factual improper party" if the victim's identity is used by another person in a civil case while using a stolen identity. Session Laws ch. 237 (Ariz. 2008, 2nd Reg. Session).
- **Identity Verification:** Establishes steps a consumer lender must take to verify the consumer's identity before extending credit. Session Laws ch. 46 (Ariz. 2008, 2nd Reg. Session).

Crimes against Children:

- **Aggravated Luring:** Establishes the crime of "aggravated luring of a minor for sexual exploitation," a class 2 felony. The crime occurs when a person misrepresents his or her age to lure a victim who is a minor. Session Laws ch. 219 (Ariz. 2008, 2nd Reg. Session).

- **Internet Age Misrepresentation:** Establishes the crime of “unlawful age misrepresentation,” a class 3 felony. The crime occurs when a person uses an electronic communication device to knowingly misrepresent the person’s age for the purposes of committing a sexual offense. Session Laws ch. 97 (Ariz. 2008, 2nd Reg. Session).

Protections for Vulnerable Individuals:

- **Drop House Operation:** Establishes the crime of “operating a drop house,” a class 4 felony. “Operating a drop house” occurs when a person uses personal or real property as a drop house for human smuggling. Session Laws ch. 170 (Ariz. 2008, 2nd Reg. Session).
- **Sex Trafficking:** Establishes trafficking another person for purposes of having the other person engage in “live sexual performances” is sex trafficking, a class 2 felony. Session Laws ch. 185 (Ariz. 2009, 1st Reg. Session).
- **Human Smuggling:** Establishes “human smuggling” involving the use or threat to use deadly physical force is a class 3 felony. Session Laws ch. 186 (Ariz. 2009, 1st Reg. Session).
- **Vulnerable Adult Exploitation:** Expands civil penalties for committing financial exploitation of or theft from a vulnerable adult. Strengthens criminal laws to protect vulnerable adults from overreaching by those who stand in a position of trust and confidence. Session Laws ch. 119 (Ariz. 2009, 1st Reg. Session).

Criminal Justice:

- **Cold Case Investigation:** Requires the Arizona Criminal Justice Commission to identify best practices for cold case investigations. Session Laws ch. 69 (Ariz. 2008, 2nd Reg. Session).
- **Biological Evidence:** Establishes retention standards for law enforcement regarding identified biological evidence collected in connection with any felony sexual offense or homicide. Session Laws ch. 282 (Ariz. 2008, 2nd Reg. Session)

Diversity Inclusion:

- **Civil Rights Advisory Board:** Continued Arizona's Civil Rights Advisory Board for ten years, until January 1, 2019. Session Laws ch. 23 (Ariz. 2008, 2nd Reg. Session).

Litigation and Transactional Documents:

- **Litigation Documents:** I drafted pleadings, non-uniform discovery, discovery motions, motions to dismiss, summary judgment motions, motions *in limine*, non-uniform jury instructions, post-trial motions, forms of judgment, appellate briefs, confidentiality agreements, releases of claims, etc.
- **Transactional:** I drafted and negotiated commercial leases and commercial sale agreements.

20. Have you practiced in adversary proceedings before administrative boards or commissions? **Yes.** If so, state:

- a. The agencies and the approximate number of adversary proceedings in which you appeared before each agency.

Arizona Department of Insurance: 5

- b. The approximate number of these matters in which you appeared as:

Sole Counsel: 5

Chief Counsel: 5

Associate Counsel: 5

21. Have you handled any matters that have been arbitrated or mediated? **Yes.** If so, state the approximate number of these matters in which you were involved as:

Sole Counsel: 10

Chief Counsel: 10

Associate Counsel: 10

22. List at least three but no more than five contested matters you negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (3) a summary of the substance of each case: and (4) a statement of any particular significance of the case.

A. *Quintana v. Circle K Stores, Inc., et al.*

- **Pima County Superior Court: C 312760**
- **Arizona Court of Appeals, Division 2: 2-CA-CV-00-0161-S**

1. 2000

2. Attorneys:

- **Defendants: I was co-counsel with Susan M. Freeman (Lewis Roca Rothgerber Christie LLP, sfreeman@lrrc.com, (602) 262-5756)**
- **Plaintiffs: Bruce A. Burke (Retired, bruce@burkepc.com, (520) 622-3596)**

3. Plaintiffs, Mr. and Mrs. Quintana, alleged Mr. Quintana sustained permanent eye injuries when he poked his eye on a pegboard display in a Circle K. The Quintanas brought a negligence claim against Circle K asking for medical bills, pain and suffering, lost wages, and loss of consortium.

To prevail, the Quintanas needed to prove the pegboard was unreasonably dangerous. At the close of Circle K's case, its trial counsel did not move for a directed verdict.

Susan Freeman and I were brought into the case after the jury awarded the Quintanas more than \$500,000.

I was responsible for preparing and arguing motions for judgment as a matter of law, new trial, and remittitur. I then was responsible for handling the matter on appeal, including preparing the opening and the reply briefs.

4. This case involved substantial hurdles to establishing a defense on appeal. Because Circle K's trial counsel did not move for a directed verdict, Circle K had waived any factual claim it had not breached its duty of care on appeal. We had to establish the issue was not whether Circle K had breached a duty of care as matter of fact, but rather whether the pegboard

display was a dangerous condition as a matter of law. While on appeal, the parties participated in a settlement conference and resolved the matter.

Though I handled many matters involving personal injuries and claim analysis, I recall this matter in particular because it involved intriguing legal and procedural issues.

B. *Bishop, et al. v. American Pony Express, Inc., et al.*

- Maricopa County Superior Court: CV2000-011723
 - United States District Court for the District of Arizona: CIV 00-1366 PHX EHC
1. June 2000 to December 2000
 2. Attorneys:
 - Defendants: I was co-counsel with Richard S. Cohen (Retired, rcohen83@cox.net, (602) 504-1425)
 - Plaintiffs: David C. Larkin (David C. Larkin PC, davidlarkinlaw@gmail.com, (480) 491-2900)
 3. This case involved multiple claims for overtime wages under the Federal Fair Labor Standards Act (FLSA). American Pony Express provided transportation services to disabled persons. At various times, American Pony Express employed plaintiffs and paid them to drive American Pony Express's vehicles. The issue in the case was whether or not the drivers were entitled to overtime.
 4. This case demonstrates my ability to resolve complicated factual and statutory matters quickly, efficiently, and fairly. Resolving the issues required reviewing thousands of timesheets and dispatch records. In less than six months, I worked through the issues, reached a prompt and fair resolution with the drivers, and secured court-approval of the settlement.

C. *Llamas v. Yuschak, et al.*

- **Graham County Superior Court: CV200029**

1. 1999-2000

2. Attorneys:

- **Plaintiffs:** Jeffrey B. Miller (Miller Weber Kory LLP, jeff@mwkfirm.com, (602) 648-4045)
- **Defendants:** I was co-counsel with Thom Klinkel (Retired, thomklinkel@gmail.com, (520) 686-4584)
- **Mediator:** Ernest Calderón (Calderón Law Offices, calderon@azlex.com, (602) 501-2533)

3. The case arose out of an accident on Interstate 40 in Northeastern Arizona near Holbrook. Our client, Mr. Yuschak, was driving a commercial tractor trailer. As he was traveling westbound, he moved to the left lane and slowed to make a U-turn across the center median so he could go eastbound. The location was not marked for legal U-turns. Plaintiffs, a mother and daughter, rear-ended his tractor trailer. Plaintiffs claimed they sustained serious, ongoing injuries.

4. This case stands out for me because it mirrored a case my co-counsel and I tried several years earlier. It allowed me to delve into the facts to develop a sound theory of what occurred.

- **Earlier Case:** Several years earlier, Mr. Klinkel and I tried *Lees v. Forsyth*. Like this case, the *Lees* case arose out of a rear-end accident on Interstate 40 and involved a commercial tractor trailer. The *Lees* case is the first case I discuss in response to Question 26 below. In short, at trial, we proved that even though our client's tractor trailer rear-ended plaintiff's van, the accident was plaintiff's fault because she made a sudden lane change and slammed on her brakes to make a U-turn across the center median.
- **This case:** Though the *Lees* case involved similar issues, the roles in this case were reversed. Here the plaintiff rear ended our client, who was driving a tractor trailer and had changed lanes and slowed to make a U-turn across the center median. I developed distinguishing facts based on deposition testimony, police evidence, and expert review. I

established our client's lane change and deceleration were only some of the factors contributing to the accident. Ultimately, the parties settled the case based on comparative fault.

23. Have you represented clients in litigation in Federal or Arizona trial courts? **Yes.**
If so, state:

The approximate number of cases in which you appeared before:

Federal Courts: 25 *

State Courts of Record: 175 *

Municipal/Justice Courts: 25 *

***I am estimating because I do not have complete records. I have not been in private practice for almost twenty years so I cannot access all the files. I have been conservative in my estimates.**

The approximate percentage of those cases which have been:

Civil: 100%

Criminal: 0%

The approximate number of those cases in which you were:

Sole Counsel: 60%*

Chief Counsel: 20%*

Associate Counsel: 20%*

***I am estimating because I do not have complete records. I have not been in private practice for almost twenty years so I cannot access all the files. I have been conservative in my estimates.**

The approximate percentage of those cases in which:

You wrote and filed a pre-trial, trial, or post-trial motion that wholly or partially disposed of the case (for example, a motion to dismiss, a motion for summary judgment, a motion for judgment as a matter of law, or a motion for new trial) or wrote a response to such a motion: 20%*

You argued a motion described above: 80%*

You made a contested court appearance (other than as set forth in above response) 5%*

You negotiated a settlement: 80%*

The court rendered judgment after trial: 5%*

A jury rendered verdict: 1%*

***I am estimating because I do not have complete records. I have not been in private practice for almost twenty years so I cannot access all the files. I have been conservative in my estimates.**

The number of cases you have taken to trial:

Limited jurisdiction court 3 *

Superior court 11 *

Federal district court 1 *

Jury 1

I include cases I arbitrated before a court-appointed or private arbitrator.

Note: If you approximate the number of cases taken to trial, explain why an exact count is not possible.

***I am estimating because I do not have complete records. I have not been in private practice for almost twenty years so I cannot access all the files. I include only cases I specifically remember.**

24. Have you practiced in the Federal or state appellate courts? **Yes.** If so, state:

The approximate number of your appeals which have been:

Civil: 3 *

Criminal: 0 *

The approximate number of matters in which you appeared:

As counsel of record on the brief: AZ 2 * U.S. 1 *

Personally in oral argument: AZ 0 U.S. 1

***I am estimating because I do not have complete records. I have not been in private practice for almost twenty years so I cannot access all the files. I include only cases I specifically remember.**

25. Have you served as a judicial law clerk or staff attorney to a court? **Yes.** If so, identify the court, judge, and the dates of service and describe your role.

The Honorable Ruth V. McGregor, Arizona Court of Appeals, Division One (August 1994 to August 1995)

I clerked for Chief Justice McGregor when she served as the Vice Chief Judge at the Arizona Court of Appeals, Division One. I researched cases, proposed dispositions, and drafted decisions and opinions. I attended case conferences with the three-judge panel and presented cases on that week's calendar. I attended the oral arguments and post-argument conferences. Chief Justice McGregor's work ethic, judicial philosophy, and genuine respect for the rule of law continue to serve as an inspiration to me.

The Honorable Edward C. Rapp, Maricopa County Superior Court (Summer 1991)

I spent the summer between my first year and second year in law school working with Judge Rapp. I found the experience enlightening. I was familiar with litigation because I had worked as a claims adjuster before going to law school. Working with Judge Rapp gave me the opportunity to see the process from the trial judge's perspective.

26. List at least three but no more than five cases you litigated or participated in as an attorney before mediators, arbitrators, administrative agencies, trial courts or appellate courts that were not negotiated to settlement. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency and the name of the judge or officer before whom the case was heard; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

A. *Lees v. Forsyth, et al.*

- **United States District Court for the District of Arizona: CIV 96-1703 PHX SMM**

1. **1996 to 1997: Jury trial resulting in a directed verdict**
2. **United States District Court for the District of Arizona before the Honorable Stephen M. McNamee**
3. **Attorneys:**
 - **Plaintiffs: Henry G. Hester (Gary Phillips Accident Law Professionals; henry@gplawpros.com, (602) 265-7767)**
 - **Defendants: I was co-counsel with Thom Klinkel (Retired, thomklinkel@gmail.com, (520) 686-4584)**
4. **This case arose out of a rear-end accident involving a commercial tractor trailer and private passenger van on Interstate 40 near Kingman, Arizona. Our client, Laurel Forsyth, was driving a commercial tractor trailer westbound in the left lane. Plaintiff, Mrs. Lees, was driving her van in the same direction, but in the right lane and at a slow speed.**

As our client's tractor trailer approached Mrs. Lees' van, Mrs. Lees moved suddenly into the left lane and slammed on her brakes. Mrs. Lees intended to make a U-turn across the center median to go eastbound. Mrs. Lees testified she was trying to make the U-turn because her husband had been arrested while driving back from Mexico, and she was trying to locate his car along Interstate 40. Her husband had gone to Mexico to buy prescription medications, and Mrs. Lees was hoping to retrieve them from his vehicle.

As soon as Mrs. Lees started changing lanes, our client slammed on her brakes but could not avoid a collision. Mrs.

Lees alleged she suffered serious, ongoing injuries. Her two children, who were in the back seat, were fine.

I located an independent witness who was listed on the police report. I deposed him in Nevada and established facts at trial showing Mrs. Lees created an unavoidable accident. As a result, Judge McNamee granted a directed verdict in our client's favor.

5. This case was significant to me because it gave me jury trial experience and provided a remarkable ending. Just before the case was given to the jury, Judge McNamee granted our motion for directed verdict, finding as a matter of law, despite the fact our client's tractor trailer had rear ended plaintiffs' van, the accident was not our client's fault. After Judge McNamee granted the directed verdict, he told Mrs. Lees the evidence established our client was paying close attention as she was driving and because of our client's quick reflexes, Mrs. Lees was not more seriously hurt or worse. It was a very gratifying moment for me and for our client, whose job was on the line in the case.

B. *American Family Mutual Insurance Company v. Continental Casualty Company*

- Maricopa County Superior Court: CV1997-013062
 - Arizona Court of Appeals, Division One: I CA-CV 00-0020
1. 1998: Summary judgment affirmed on appeal in a published opinion
 2. Maricopa County Superior Court before the Honorable William J. Schafer, III
 3. Attorneys:
 - Plaintiff: I was co-counsel at the trial level with Carl Mariano (Lewis Brisbois Bisgaard & Smith LLP, Carl.Mariano@lewisbrisbois.com, (602) 385-1059) and at the appeal level with Lynn M. Allen (Tyson & Mendes LLP, lallen@tysonmendes.com, (602) 386-5656)
 - Defendant: Robert R. Byrne (The Herzog Law Firm, P.C., robert.byrne@herzogfirm.com, (480) 264-0842)

4. This case involved coverage under two primary automobile insurance policies and one umbrella policy and a complicated coverage dispute over which coverage would be primary to pay a large claim and which coverage would be secondary.
5. This case was resolved in our client's favor on summary judgment. The Arizona Court of Appeals affirmed the trial court's ruling. I drafted and argued the summary judgment motion. I worked on the appellate brief. I did not argue the case on appeal because I left private practice before it was heard. The case resulted in a published opinion at *American Family Mut. Ins. Co. v. Continental Cas. Co.*, 200 Ariz. 119, 23 P.3d 664 (App. 2001). This case is an example of the type of cases I often handled. Attachment D is the summary judgment motion, which I include as one of my two professional writing samples.

C. *Rubin v. State Farm Mutual Automobile Insurance Company*

- United States District Court for the District of Nevada, No. CV-97-01473-PMP
 - United States Court of Appeals for the Ninth Circuit, No. 98-16961
 - Nevada Supreme Court, No. 36631
1. 1997 to 2002: Summary judgment reversed on appeal in a published opinion
 2. United States Court of Appeals for the Ninth Circuit before the Honorable Procter Hug, Jr., the Honorable Dorothy W. Nelson, and the Honorable M. Margaret McKeown
 3. Attorneys:
 - Plaintiff: Anthony P. Sgro (Sgro and Roger, tsgro@sgroandroger.com, (702) 384-9800)
 - Defendant: I argued the case before the United States Court of Appeals for the Ninth Circuit. I was co-counsel with Susan M. Freeman (Lewis Roca Rothgerber Christie LLP, sfreeman@lrrc.com, (602) 262-5756), Douglas L. Christian (Christian, Dichter & Sluga, P.C., dchristian@cdslawfirm.com, (602) 792-1717), and Pamela B. Petersen (Axon Enterprise Inc., pampetersen@cox.net, (623) 533-3875)
 4. The issue in this case was whether the insured could collect

on her medical payments coverage for medical bills paid by her workers' compensation insurance if the insured was required to use a portion of her third-party injury settlement to repay her workers' compensation carrier for those same medical bills.

5. This case was significant because it presented an issue of first impression regarding medical payments coverage under an automobile insurance policy and the interplay with workers' compensation insurance coverage for medical bills. The case resulted in two published opinions: (1) *Rubin v. State Farm Mutual Auto. Ins. Co.*, 292 F.3d 639 (9th Cir. 1999) and (2) *Rubin v. State Farm Mut. Auto. Ins. Co.*, 43 P.3d 1018 (Nev. 2002).

For me personally, the *Rubin* case was important because it provided me an opportunity to brief and argue a case before the Ninth Circuit in San Francisco.

D. *American Family Mutual Insurance Company v. Bertley, et al.*

- United States District Court for the District of Arizona: CIV 96-1703 PHX SMM
1. 1997 through 1998: Summary judgment not appealed
 2. United States District Court for the District of Arizona before the Honorable Stephen M. McNamee
 3. Attorneys:
 - Plaintiff/Counter-defendant American Family Mutual Insurance Company: I was co-counsel with James T (Skip) Acuff, Jr. (Acuff Law PLC, jtacuff@hotmail.com, (602) 390-7755)
 - Defendant/Counter-claimant Bertley: W. Dea Montague (Retired, wdeamontague@hotmail.com, (480) 251-9590)
 4. This case involved a complicated coverage issue under a homeowner's insurance policy.

The named insured under the insurance policy sold the insured property to Mrs. Bertley. The title company worked out the details of the sale, calling it "creative financing" and a "non-notification loan." The title company arranged for a sale in which no notice was given to the mortgage company or to

the insurer, our client. Under the “sale agreement,” Mrs. Bertley never acquired insurance in her name. Instead, she signed a document saying the seller/insured was to maintain insurance on the house and Mrs. Bertley had to go through the seller for any claims. The seller maintained an American Family policy on the house.

The house was subsequently damaged by a fire. After the fire but before the house was repaired, Mrs. Bertley’s grandson, a four-year old boy who lived at the house, drowned in the backyard swimming pool. The young boy was at the house with his grandfather when he drowned.

American Family paid more than \$70,000 to repair the house because the mortgage company still had an interest in the property and the repairs. But because the seller/insured no longer had an insurable interest in the house and no longer lived there, American Family denied claims for “loss of use” and personal property. Ultimately, the trial court granted American Family’s motion for summary judgment.

5. This case was significant because of the complicated claims, which included American Family’s claim for declaratory judgment to resolve the coverage dispute with Mrs. Bertley, and Mrs. Bertley’s counterclaims for breach of the insurance policy as an insured, coverage as a third-party beneficiary, tortious interference with contract by American Family, equitable subrogation, breach of the duty of good faith and fair dealing, and a claim for punitive damages. In addition, the case received some publicity because of the grandson’s death.

Overall, the case required a careful balancing of effective client representation with appropriate empathy and respect towards Mrs. Bertley and her family in light of her emotional condition following the fire and her grandson’s death.

E. *American Family Mutual Insurance Company v. Johnson*

- **Maricopa County Superior Court, CV1999-14151**

- 1. 1999-2000: Summary Judgment not appealed**
- 2. Maricopa County Superior Court Judge Alan S. Kamin**
- 3. Attorneys:**
 - **Plaintiff: I was co-counsel with Greg S. Como (Maricopa County Superior Court, comog@superiorcourt.maricopa.gov, (602) 372-0754)**
 - **Defendant: Robert D. Bohm (Robert D Bohm PLLC, info@premisesinjurylaw.com, (602) 957-7400, ext. 101)**
- 4. This case involved a coverage issue arising under a homeowner's insurance policy. The insureds' son had taken their car to purchase alcohol for himself and his friends, who were all minors. The son subsequently was involved in a car accident. The son was an excluded driver under the insureds' automobile policy. He had no insurance coverage of his own.**

The coverage issue was whether the insureds were entitled to coverage under their homeowners' insurance policy despite exclusions barring coverage for claims arising out of the use of an automobile and arising out of an insured's criminal acts. I completed the discovery necessary to support a motion for summary judgment, prepared the motion for summary judgment, and argued it. The court granted the motion, ruling the claims against the insureds did not trigger a duty to defend or a duty to indemnify under their homeowner's insurance policy.
- 5. This case is significant because it is representative of insurance coverage cases I ordinarily handled. I had to analyze complex factual situations and apply insurance policy language to those situations. Further, Arizona courts had not addressed the exclusion for criminal acts, making it an issue of first impression. Attachment E is the summary judgment motion, which I include as one of two of my professional writing samples.**

27. If you now serve or have previously served as a mediator, arbitrator, part-time or full-time judicial officer, or quasi-judicial officer (e.g., administrative law judge, hearing officer, member of state agency tribunal, member of State Bar professionalism tribunal, member of military tribunal, etc.), give dates and details, including the courts or agencies involved, whether elected or appointed, periods of service and a thorough description of your assignments at each court or agency. Include information about the number and kinds of cases or duties you handled at each court or agency (e.g., jury or court trials, settlement conferences, contested hearings, administrative duties, etc.).

Maricopa County Superior Court Judge (February 2009 to present):

Since I was appointed to the Maricopa County Superior Court, I have stood for retention twice. During my service, I served on the four major assignments (juvenile, civil, criminal, and family). I also serve as a settlement judge in an assortment of cases.

- **Juvenile Assignment (July 2018 to present):** Juvenile matters impact the future of our youths and families. Because I preside over cases involving dual wards and victims of sex trafficking, my cases are some of the most complex and compelling. I am humbled to be one of two judges developing our STRENGTH Court for victims of sex trafficking. “STRENGTH” stands for “Succeed Through Resilience, Empower New Growth Through Hope.” I developed the acronym. I chose it because it reflects the characteristics of these young victims. They are strong and resilient, and they need our support and hope to grow stronger.
- **Civil Assignment (July 2015 to June 2018):** Civil matters involve a myriad of topics, from car accidents to complicated business transactions. The assignment involves presiding over jury trials and ruling on many substantive motions. I also presided over Lower Court Appeals as they were assigned to me. My written rulings frequently involved complex legal and factual issues. I always worked hard to craft thoughtful, legally-sound, well-written rulings.
- **Criminal Assignment (July 2012 to June 2015):** Criminal matters are of vital importance because a person’s liberty is at stake. At the same time, victims deserve justice. I worked hard to balance these sometimes competing interests. The criminal assignment is a very interactive assignment. I spent more time in the courtroom on the criminal assignment than on any other assignment. I learned a great deal about working with jurors because I presided over a jury trial almost every week. I find working with jurors very

rewarding. When I speak to jurors after a trial, they say the experience changed them for the better, especially in criminal cases. They leave with a renewed respect for our justice system.

- **Family Assignment (February 2009 through June 2012):** This assignment can tear at the hearts of those involved. As judges, we are called upon to make decisions touching the daily lives of children and parents across the state. I worked to ensure the lives I changed were changed for the better. The Arizona Legislature has imposed strict statutory guidelines to guarantee each family is treated fairly. To ensure uniform, fair treatment across Arizona, I worked with Judge Bruce Cohen to create templates covering the legislatively mandated legal standards and factors. I address those templates in greater detail in my answer to Question 19 above. In developing the templates, our goal was to ensure judges could apply the law and resolve the disputes efficiently and fairly so the parties and their children could move forward and succeed.

Judge Pro Tempore, Maricopa County (January 2007 to January 2009):

Generally, I served as a settlement conference judge. I persuaded the parties to settle in more than half of my cases. I would spend a day on the bench on a probate calendar. My experiences as a Judge Pro Tempore allowed me to refine my lawyering skills and begin developing my judicial temperament. It reinforced my desire to become a judge.

Court Appointed Arbitrator:

I served as an arbitrator pursuant to Rule 73 of the Arizona Rules of Civil Procedure. I always provided my services pro bono.

28. List at least three but no more than five cases you presided over or heard as a judicial or quasi-judicial officer, mediator or arbitrator. State as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) the names, e-mail addresses, and telephone numbers of all counsel involved and the party each represented; (4) a summary of the substance of each case; and (5) a statement of any particular significance of the case.

I served on all four major assignments (family, criminal, civil, and juvenile). I did not include a juvenile case because of the confidential nature of those matters.

A. *State v. Danny Wise*

- **Maricopa County Superior Court: CR2009-173845-001**

1. 2009 through 2016

2. Maricopa County Superior Court

3. Attorneys:

- **State: Karen Pugh (Maricopa County Attorney's Office, pughk@mcao.maricopa.gov, (602) 506-3411) and Maryann McKessy (Maricopa County Attorney's Office, Mckessym@mcao.maricopa.gov, (602) 506-3411)**
- **Defendant: Diego Rodriguez (Rodriguez Law Office PLLC, Diego@rlopllc.com, (602) 535-9904) and John Blischak (Blischak Law, john@blischaklaw.com, (602) 497-0904)**

4. The State charged Mr. Wise with 30 felony counts, 8 for fraud and 22 for theft. The State alleged Mr. Wise defrauded 10 victims (5 married couples) out of more than \$1,000,000. The victims had been clients of Mr. Wise and his accounting firm. Mr. Wise completed tax documents for the victims. Mr. Wise told the victims he had paid their tax liabilities and had the victims pay him the amount of the taxes. Over a period of years, the victims realized Mr. Wise had not paid their taxes. The jury convicted Mr. Wise on all 30 counts.

The evidence was quite complex. Mr. Wise moved money through numerous accounts. Ultimately, the accounting evidence was among some of the most complicated the attorneys and I had seen. I worked with the attorneys to ensure the evidence would be presented in an organized, efficient manner so the jury could understand.

The harm Mr. Wise caused each victim stood out. They were his friends. One victim had known Mr. Wise since grade school. They trusted him implicitly. He betrayed them. They lost homes. Their children lost educational opportunities. He stole more than money. He stole their futures.

5. The trial lasted six weeks. It was the most complex case I had presided over to that point. Because the evidence often was dry, I focused on the jurors needs to be sure they remained engaged and focused. I learned a great deal about handling complex cases involving complicated financial evidence.

For me, this case highlights the importance of respecting the victims in financial or white-collar crimes. The victims consistently expressed concern about restitution. To address their concerns, I delayed sentencing to give Mr. Wise the opportunity to pay restitution, something he insisted he could do. In the end, he did not.

For sentencing, I evaluated the appropriate sentence based on the impact on each victim. I imposed aggravated sentences based on the significant impact to some of the victims, and the presumptive sentence based on the lesser impact to other victims. I imposed consecutive sentences so Mr. Wise would serve a period of time attributable to each victim. In the end, I sentenced Mr. Wise to a longer term than the State had requested because I found justice merited a longer sentence.

Attachment F is my ruling denying Mr. Wise's petition for post conviction relief, which I include as one of three of my judicial writing samples.

B. *State v. Anthony Gehon*

- **Maricopa County Superior Court: CR2010-007690-001**

1. 2010 through 2016

2. Maricopa County Superior Court

3. Attorneys:

- **State: Edward Leiter (Maricopa County Attorney's Office, leitere@mcao.maricopa.gov, (602) 506-3411) and Stephen Umpleby (Mesa City Prosecutor's Office, stephen.umpleby@mesaaz.gov, (480) 329-4802)**
- **Defendant: Robert Dossey (Robert L Dossey PC, bob@dossey.com, (480) 398-7177)**

4. The State charged Mr. Gehon with more than 120 counts relating to Mr. Gehon's alleged operation of a prostitution ring. The State alleged Mr. Gehon's underage niece and underage step-daughter were among the victims he forced to engage in prostitution. The State further charged Mr. Gehon with sexually molesting his underage niece and stepdaughter and with having his underage niece perform in pornographic videos.

In total, the case involved seven victims for acts committed between 2006 and 2010. The trial lasted more than seven months, and the jurors asked more than 1,000 questions. The jury convicted Mr. Gehon of more than 100 of the counts.

The evidence included graphic descriptions of sex acts. It included graphic videos of the victims engaging in sex acts with clients. Finally, the evidence included videos of Mr. Gehon's underage niece performing in hardcore pornographic videos. Empaneling a jury who could view the evidence and remain fair and impartial required the careful use of jury questionnaires and significant individual questioning.

In addition to the emotionally charged evidence, Mr. Gehon's case involved complex financial issues. The State alleged Mr. Gehon used a system of websites to market his enterprise. The financial and electronic evidence was almost as complex as the evidence in the *Wise* case above.

5. I presided over this case after the *Wise* case. I was grateful for everything I learned about handling long, complex jury trials.

Because we knew the trial would take months and the jury would have trouble remembering key events and actors, I had the attorneys create a notebook for each juror. Each notebook included a list of the counts, the dates of the alleged crimes, the victims' names, and the alleged acts. The notebooks included current photographs of each witness to help the jurors remember the witnesses months later during deliberations.

The notebooks helped me as much as the jurors. I kept detailed notes about each count. As a result, I could rule on evidentiary issues and motions to dismiss counts quickly and accurately. I could tell the lawyers what the witnesses said, what date the witness said it, and even give an approximate time for when the witness said it. Not every case requires this type of note taking, but this one did.

This case reaffirmed my approach to sentencing, particularly when the matter involves multiple victims who suffered significant emotional and physical harm. As in the *Wise* case, I imposed sentences, including consecutive sentences, based on the significant impact to the victims.

Finally, the case required me to be creative with regard to recording the sentence I imposed. In accounting for seven victims with more than 100 counts, the sentences were complicated. Some were concurrent. Others were consecutive. Some were eligible for early release. Others had to be served day-for-day. I worked closely with the clerk's office to develop a process using a series of spreadsheets to make a clear record of the sentences. We were successful. The Arizona Department of Corrections expressed its appreciation because it allowed Mr. Gehon to be processed quickly and without incident in one day rather than over several days. The clerk's office continues to use the process we developed in other complicated, multi-count cases.

C. *John Brakey v. Michelle Reagan, et al.*

- **Maricopa County Superior Court: CV2016-00229**

1. 2016

2. Maricopa County Superior Court

3. Attorneys:

The election officer for each of the fifteen counties, the Arizona Secretary of State, the Arizona Attorney General, and the Arizona Governor were all parties. By agreement, many waived their appearance for arguments and the bench trial. I list those who litigated the case and participated in the bench trial.

Mr. Brakey: Michael Kielsky (Udall Shumway PLC, mk@udallshumway.com, (480) 461-5300)

Secretary of State Michele Reagan and Attorney General Mark Brnovich (United States Equal Opportunity Employment Commission, James Driscoll-Maceachron, james.driscoll-maceachron@eeoc.gov, (602) 640-5010)

Maricopa County Board of Supervisors and Helen Purcell (Maricopa County Attorney's Office, Colleen Connor, connorc@mcao.maricopa.gov, (602) 506-3411)

Santa Cruz Board Of Supervisors and Suzanne Sainz (Santa Cruz County Attorney's Office, Charlene Laplante, claplante@santacruzcountyaz.gov, (520) 375-7780)

Pima County Board of Supervisors and F. Ann Rodriguez (Pima County Attorney's Office, Daniel Jurkowitz, daniel.jurkowitz@pcao.pima.gov, (520) 724-5700)

4. The case involved a high-profile challenge to the outcome of Arizona's 2016 Presidential Preference Election. Mr. Brakey sought to set aside the results of the election based on numerous issues, including illegal voting. He alleged issues in multiple counties, including Maricopa, Pima, and Santa Cruz. The election officials sought to dismiss the case on several grounds, including arguing the Presidential Preference Election is not subject to citizen lawsuits.

5. The case challenged me on many levels. The legal issues were novel. The fundamental question of whether Arizona law even

allowed Mr. Brakey to bring a citizen challenge was an issue of first impression. In addition, what constitutes illegal voting is complicated and involves a very specific set of circumstances. These were just two of the many issues raised. I could not merely rely on my knowledge of Arizona's election law. I had to work hard and efficiently to stay in front of the issues.

Arizona law imposes very tight time constraints in election law cases. After holding a two-day bench trial, I ruled from the bench and then issued an eighteen-page, comprehensive signed minute entry by eight a.m. the next morning so the parties could seek review. I had to produce my written ruling quickly so the parties could timely file an appeal.

The case challenged my skills at maintaining decorum in and around the courtroom and the courthouse. The case received both statewide and national attention. Safety was a concern. People were agitated. There were rallies and protests around the courthouse. Some of the litigants were being threatened.

I had to address the audience after several outbursts and explain proper behavior in the courtroom. I explained I would be respectful of the parties and the witnesses but I needed everyone in the courtroom to remain calm and quiet so I could do just that. The more I listened to the witnesses and showed them respect, the more the tensions gave way to calm. I was pleased to keep the focus on the evidence and the facts, not the emotions or the television cameras. In the end, the case was about the issues raised and the rule of law, not politics or rallies.

Because the case was so emotionally charged, we were prepared to address any security and safety concerns. I was grateful we did not need to put any of our plans into action. No rallies or protests followed my ruling. The audience calmly left the courtroom and moved on to other matters.

Attachment G is an excerpt of my ruling in this case, which I include as one of my three judicial writing samples. As I explain above, I wrote this ruling within eighteen hours of completing the bench trial.

D. *Large v. Large*

- **Maricopa County Superior Court: FC2009-092158**

1. 2009 through 2010

2. Maricopa County Superior Court

3. Attorneys:

- **Mr. Large: Steve Everts (Udall Shumway PLC, she@udallshumway.com, (480) 461-5300)**
- **Mrs. Large: Amber Mied (Mied Law Group, P.C., amied@miedlawgroup.com, (480) 951-7888)**

4. This family law case presented complex legal issues regarding a premarital agreement in addition to deeply emotional issues involving children.

The history of the relationship gives perspective to the legal issues. Mr. Large was a 25-year old medical student when he met Mrs. Large, who was a 15-year old high school student at the time. Mr. Large insisted on a premarital agreement. Mrs. Large agreed to it. At that time, Mr. Large was 32 and had his own medical practice. Mrs. Large was 22 and had a high school diploma with a few college credits. Mr. Large had an attorney. Mrs. Large decided she did not need one.

The terms of the premarital agreement were starkly one-sided. Mrs. Large gave up all rights to Mr. Large's medical practice, his earnings during the marriage, and all claims for spousal maintenance. Mr. Large agreed Mrs. Large would not be liable for any student loans Mr. Large incurred during the marriage if he sought to further his professional education. Though one-sided, both parties knew and understood all but one of the terms in the premarital agreement. Mrs. Large acknowledged she could have refused to sign it.

When the parties appeared before me, Mr. Large had moved to another state, leaving Mrs. Large and their children in Arizona. Mrs. Large challenged the premarital agreement.

After an extensive bench trial, I found only one provision of the premarital agreement was unenforceable. As a result, Mrs. Large could recover attorney's fees, but nothing else.

5. The case represents a challenge every judge faces at some point. The rule of law does not always result in the most sympathetic party prevailing. A just outcome can be both fair and harsh.

Attachment H is an excerpt of my ruling in this case, which I include as one of my three judicial writing samples.

29. Describe any additional professional experience you would like to bring to the Commission's attention.

I have worked on many varied projects during my professional life. The following highlights some of them.

Judges' Day at the Arizona Legislature:

Working with the Arizona Senate and House of Representatives, I developed an educational program for judges. Every year for the past three years, judges from the superior court and appellate courts have spent a day shadowing legislators at the Capitol. The legislators and judges share their experiences and can identify their commonalities. The participants gain insight into how the other branch functions, their very different roles, and how each honors its role. This dialogue provides a foundation for mutual respect.

Biennial Arizona Legislative Staff Day at the Courts:

I developed an educational program for judicial officers and legislative staff members to discuss legislative drafting and legislative interpretation. This program dovetails with Judges' Day at the Arizona Legislature, which I discuss above. The Legislative Staff Day at the Courts begins with legislative staff and judicial officers observing court hearings and discussing the judicial process. The remainder of the day involves interactive programs. Legislative staff members discuss and answer questions about Arizona's legislative drafting process and rules. Judges and commissioners then discuss and answer questions about legislative interpretation.

Annual Law Day at Maricopa County Superior Court:

Law Day is recognized nationally on May 1st as a day to celebrate the rule of law. I have been responsible for planning the event for the Maricopa County Superior Court for a number of years. I developed a general approach involving a moderated discussion about an

important topic. As part of the event, I developed a working relationship with the Arizona State Library and Archives, which displays artifacts related to the topic, and the Sandra Day O'Connor College of Law at Arizona State University, which hosts the events. The following are the most recent events I organized:

- In 2017, the focus was on the Fourteenth Amendment. I arranged a presentation regarding *Miranda v. Arizona*, the “*Miranda Rights*” case. Captain James Cooley (ret.) and Judge Barry Silverman (ret.) spoke. Captain Cooley arrested and interrogated Ernesto Miranda. Captain Cooley’s perspective as a police officer brought the case to life for the attendees. Judge Silverman, a recognized expert on the *Miranda* case, spoke about Mr. Miranda as a person.
- In 2018, I arranged for Karen Korematsu and Judge Mary Schroeder to speak about the World War II Supreme Court of the United States opinion in *Korematsu v. United States*. Karen’s father, Fred T. Korematsu, was the subject of the Supreme Court case. Karen put a very human face on the much-maligned opinion, which the Supreme Court recently denounced. Judge Schroeder sat on cases in which the World War II convictions were set aside because evidence established the then Solicitor General concealed evidence from and misled the Supreme Court. The event was particularly moving because more than 30,000 persons of Japanese descent were incarcerated in Arizona, many of them American citizens. The Arizona State Library and Archives displayed artifacts, photographs, and newspapers from the Arizona camps.
- In 2019, the national topic was Free Speech, Free Press, Free Society. I worked with other judges to have Chief Justice Rebecca White Berch (ret.) moderate a discussion on free speech and free press. The panel included nationally recognized First Amendment experts and award-winning journalists. The Arizona State Library and Archives displayed priceless artifacts, including the pen, inkwell, and other items used to sign the Arizona Constitution, which established free speech rights for all Arizonans.

2019 Maricopa County Dependency Bench and Bar Conference:

The Maricopa County Superior Court annually conducts a conference for judicial officers and attorneys who work on dependencies in Maricopa County. Though relatively new to the juvenile bench at the time, I was asked to organize the conference in 2019. We had approximately 200 judicial officers, lawyers, and others

who work on dependency issues attend the full day conference. In addition to coordinating the event, I chaired a panel on a View from the Bench, during which judges from the superior court and the court of appeals answered the participants' questions.

2018 Arizona Judicial Conference Planning Committee:

Every year, the Arizona Supreme Court conducts a conference for all judicial officers in the state. I served as a Maricopa County representative on the planning committee. For the conference, I organized and moderated a panel discussion on statutory interpretation. The panel consisted of legislative lawyers, legislative staff, and the Governor's Chief Counsel.

2017 Judicial Education Day:

Every year, the Maricopa County Superior Court conducts a one-day education program for judicial officers. I served as co-chair in 2017. Our keynote speaker was Ross Guberman, a nationally recognized authority on judicial writing. We included a session on equal protection in honor of the 150th Anniversary of the 14th Amendment.

Family Law Instructor for the Arizona Supreme Court's New Judge Orientation:

Every full-time judicial officer who serves on any Arizona appellate court or superior court must take the New Judge Orientation during the judicial officer's first year of service. The orientation involves classes over a two-week period. One day is devoted to family law. Judge Bruce Cohen and I have taught the bulk of the family law section since 2011. Judge Suzanne Cohen joined us in 2016.

Instructor for the State Bar of Arizona Course on Professionalism:

Every member of the State Bar of Arizona must take the Course on Professionalism within one year of being admitted to the bar. I teach part of the course at least once every year.

Co-Editor of the Family Law Bench Book:

The Arizona Supreme Court publishes a bench book for most assignments. The bench book gives judicial officers quick, easy reference materials when they are on the bench. Since 2015, I served as the co-editor (with Judge Suzanne Cohen). In 2015, we made major changes to make it more user friendly.

Veterans' Stand Down, Maricopa County:

Every year, many different groups come together to provide services to veterans. Maricopa County Superior Court's criminal division participates. While serving on the criminal bench, I was privileged to serve at Veterans' Stand Down. During Veterans' Stand Down, a section of the Coliseum in the Arizona State Fairgrounds becomes a series of courtrooms. Attorneys, judges, and court staff volunteer their time to resolve as many legal issues as we can for the veterans. I served at this event every year I could. Veterans' Stand Down was particularly meaningful for me one year because my brother, who is a disabled veteran, spent the day at the event.

National Adoption Day, Maricopa County:

National Adoption Day is celebrated the Saturday before Thanksgiving. Nationally, lawyers, judges, court staff, and others volunteer their time to perform adoption hearings in advance of the holiday season. Maricopa County is one of the largest events in the country. On that day, I get to make people mothers and fathers. I get to give children a mom or a dad and sometimes both. Every year, I look forward to that Saturday. The day is full of laughs, smiles, and tears. It marks the beginning of my holiday season.

Arizona Association of Family and Conciliation Courts (Az AFCC) Summit Projects:

The Az AFCC is a group of professionals who come together with the goal of improving the lives of children and families. The Az AFCC began producing Summit Projects in 2011. The goal was to create useful tools for people who work on family law matters. I was involved in the first three Summit Projects. I co-chaired the third, in which we put together a comprehensive approach to handling a family law matter when domestic violence is alleged. As part of that project, we developed a tool for judges and others to use to evaluate the risk of death or serious physical injury.

Speaker, Arizona Family Support Council (AFSC):

Through the AFSC, lawyers, lay people, and judges work on family support issues such as child support. Until 2017, the AFSC held an annual conference. I annually had the privilege of speaking to these dedicated individuals. My topic remained the same. I gave them a legislative and court case update with a little twist of humor. In 2014, I was named the AFSC Judicial Officer of the Year.

Certified Election Official and Troubleshooter:

Before joining the Maricopa County Superior Court, I was a Certified Election Official. The Arizona Secretary of State issues the certification upon satisfactory completion of the required coursework. Certain election-related jobs require the certification. During the statewide primary and general elections, I served as a troubleshooter for Maricopa County Elections, addressing problems in the precincts assigned to me. I handled all types of issues, from overflowing sinks to broken tabulating machines. I know firsthand the work involved in running free and fair elections. I am grateful to our citizens who give their time to preserve our right to vote.

Volunteer Lawyers' Program, Community Legal Services, Maricopa County:

Before my appointment to the bench, I handled guardianships for grandparents who were caring for their grandchildren and for parents with disabled adult children. I volunteered to be attorney for the day to meet with low-income people.

BUSINESS AND FINANCIAL INFORMATION

30. Have you ever been engaged in any occupation, business or profession other than the practice of law or holding judicial or other public office, other than as described at question 14? **No.** If so, give details, including dates.
31. Are you now an officer, director, majority stockholder, managing member, or otherwise engaged in the management of any business enterprise? **Yes.** If so, give details, including the name of the enterprise, the nature of the business, the title or other description of your position, the nature of your duties and the term of your service.

My spouse and I share an undivided 100% interest in KG Corgi, LLC. It is a limited liability company with one asset, a townhome in central Phoenix. My spouse is the managing member.

We purchased this townhome to ensure my brother has a place to live. My brother is a disabled veteran who cannot cover his living expenses. By purchasing the townhome and allowing my brother to live there for the cost of actual expenses or less, we ensured he could live independently in a safe environment. Our goal is to ensure he has what he needs to live and does not become homeless.

Do you intend to resign such positions and withdraw from any participation in the management of any such enterprises if you are nominated and appointed? **No.** If not, explain your decision.

Though I retain the ownership interest, I am not involved in the direct management. By having my spouse manage the townhome through the limited liability company, my brother has a stronger sense of independence than he otherwise would have. My ownership interest poses no problem with regard to the Code of Judicial Conduct. I would recuse myself from any matter involving the townhome or the limited liability company whether I was a member or not.

- 32. Have you filed your state and federal income tax returns for all years you were legally required to file them? **Yes.**
- 33. Have you paid all state, federal and local taxes when due? **Yes.**
- 34. Are there currently any judgments or tax liens outstanding against you? **No.**
- 35. Have you ever violated a court order addressing your personal conduct, such as orders of protection, or for payment of child or spousal support? **No.**
- 36. Have you ever been a party to a lawsuit, including an administrative agency matter but excluding divorce? **No.**
- 37. Have you ever filed for bankruptcy protection on your own behalf or for an organization in which you held a majority ownership interest? **No.**
- 38. Do you have any financial interests including investments, which might conflict with the performance of your judicial duties? **No.**

CONDUCT AND ETHICS

- 39. Have you ever been terminated, asked to resign, expelled, or suspended from employment or any post-secondary school or course of learning due to allegations of dishonesty, plagiarism, cheating, or any other "cause" that might reflect in any way on your integrity? **No.**
- 40. Have you ever been arrested for, charged with, and/or convicted of any felony, misdemeanor, or Uniform Code of Military Justice violation? **No.**

41. If you performed military service, please indicate the date and type of discharge. If other than honorable discharge, explain. **Not Applicable.**
42. List and describe any matter (including mediation, arbitration, negotiated settlement and/or malpractice claim you referred to your insurance carrier) in which you were accused of wrongdoing concerning your law practice. **Not Applicable.**
43. List and describe any litigation initiated against you based on allegations of misconduct other than any listed in your answer to question 42. **Not Applicable.**
44. List and describe any sanctions imposed upon you by any court. **Not Applicable.**
45. Have you received a notice of formal charges, cautionary letter, private admonition, referral to a diversionary program, or any other conditional sanction from the Commission on Judicial Conduct, the State Bar, or any other disciplinary body in any jurisdiction? **No.**
46. During the last 10 years, have you unlawfully used controlled substances, narcotic drugs or dangerous drugs as defined by federal or state law? **No.**
47. Within the last five years, have you ever been formally reprimanded, demoted, disciplined, cautioned, placed on probation, suspended, terminated or asked to resign by an employer, regulatory or investigative agency? **No.**
48. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? **No.**
49. Have you ever been a party to litigation alleging that you failed to comply with the substantive requirements of any business or contractual arrangement, including but not limited to bankruptcy proceedings? **No.**

PROFESSIONAL AND PUBLIC SERVICE
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50. Have you published or posted any legal or non-legal books or articles? **Yes.** If so, list with the citations and dates.
- **Family Law Domestic Relations Bench Book. Arizona Supreme Court (Co-editor) (2015 to present)**
 - **Family Law Templates for Superior Court Judges. Maricopa County Superior Court (Co-Editor) (2011 to present)**

- ***Domestic Violence Preliminary Intervention: Assessment and Early Intervention for Alleged Abusers, Abused Persons, and Children.*** Arizona Association of Family and Conciliation Courts (Summit Project Co-Chair) (2013)
 - ***Guidelines to Non-Clinical Monitored Parenting Time.*** Arizona Association of Family and Conciliation Courts (Summit Project Committee Member) (2012)
 - ***Parenting Communication Resources in High Conflict Cases.*** Arizona Association of Family and Conciliation Courts (Summit Project Committee Member) (2011)
 - ***Additional Insureds and Indemnitees: An Analysis Checklist.*** Fourth Annual National Forum on Additional Insured Endorsements and Contractual Indemnity Agreements, Institute for International Research (November 1999)
 - ***Independent Counsel: When It Is Required and the Limits of Its Independence.*** 1999 Annual Extra-Contractual Liability Seminar, Defense Research Institute (September 1999)
 - ***Analyzing the Claim for Bad Faith Potential: Establishing a Defense to Bad Faith Allegations.*** Bad Faith Litigation Conference, Mealey's (1997)
 - ***Property Damage Is an Emotional Experience.*** 23 Real Estate L. J. 123 (Co-Authored with Marianne Moody Jennings) (Fall 1994)
51. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge? **Yes.**
52. Have you taught any courses on law or lectured at bar associations, conferences, law school forums or continuing legal education seminars? **Yes.** If so, describe.
- ***View from the Juvenile Bench.*** Maricopa County Juvenile Dependency Bench and Bar Conference, Maricopa County Superior Court (Moderator) (Panel was comprised of superior court and court of appeals judges) (2019)
 - ***Legislative Drafting in Arizona.*** Arizona Judicial Conference, Arizona Supreme Court (Moderator) (Panel was comprised of legislative lawyers, legislative staff, and the Governor's General Counsel) (2018)

- **Family Law Overview. New Judge Orientation, Arizona Supreme Court (Instructor) (Annually from 2011 to present)**
- **Family Law Annual Rotation Training. Maricopa County Superior Court (Instructor) (2012, 2013, 2014, and 2017)**
- **Legislative and Judicial Updates on Family Support. Annual Conference, Arizona Family Support Council (Featured Speaker) (2012 to 2017)**
- **Ethics and Professionalism Course. State Bar of Arizona (Instructor) (Annually from 2012 to present)**
- **Managing Difficult Behaviors. Arizona Judicial Conference, Arizona Supreme Court (Panelist) (2015)**
- **Family Law Section. CLE by the Sea, State Bar of Arizona (Panelist) (2011 and 2012)**
- **Break the Silence, Arizona Elder Abuse Coalition Annual Event (Keynote Speaker) (2008)**
- **Public Service Orientation Program: Ethics Instruction for new legislative employees and elected officials. Arizona House of Representatives (Instructor) (Annually 2001 to 2007)**
- **Miscellaneous seminars for the Arizona Supreme Court, the Maricopa County Superior Court, the State Bar of Arizona, the Maricopa County Bar Association, and the Sandra Day O'Connor College of Law at Arizona State University**

53. List memberships and activities in professional organizations, including offices held and dates.

Arizona Judges Association (June 2009 to present):

The Association is comprised of judicial officers who seek to improve the administration of justice in Arizona. The Association facilitates a public understanding of how our judiciary operates. It encourages cooperation with the other branches of government to build a stronger and more effective judicial system.

I have been a member since joining the bench in 2009. I was on the executive committee from 2010 to 2018. During that time, I served as the treasurer, secretary, vice-president and president. As a member

of the Association, I worked with the Arizona Legislature to establish the annual Judges' Day at the Arizona Legislature beginning in 2017.

Have you served on any committees of any bar association (local, state or national) or have you performed any other significant service to the bar? **Yes.**

List offices held in bar associations or on bar committees. Provide information about any activities in connection with pro bono legal services (defined as services to the indigent for no fee), legal related volunteer community activities or the like.

State Bar of Arizona Civil Jury Instructions Committee (2016 to 2018):

The Committee reviews and updates civil jury instructions. I discuss the Committee and my involvement in response to question 19 above.

54. Describe the nature and dates of any relevant community or public service you have performed.

Arizona Anytown Leadership Camp (2016 to present):

I serve as an advisor at the weeklong camp. I work with Anytown during the year to ensure the delegates have what they need for the camps. Anytown provides programs for delegates, who range in age from fifteen to nineteen years old. It helps the delegates develop the leadership skills and character they need to succeed in a diverse society. The program encourages mutual understanding, respect, and trust. The delegates learn citizenship, personal responsibility, and conflict resolution skills.

Arizona Town Hall (1999 to present):

I am a member of the training committee and have served as a report co-chair and panel recorder. In my various roles, I work with the diverse participants to prepare a report reflecting their consensus. Arizona Town Hall engages the people of Arizona in a civil discourse about pressing issues. The process builds bridges across political, geographical, and other barriers while developing leaders and engaged citizens. The experience of seeing 150 or more people come together to work through issues important to Arizona is exciting. I leave every Town Hall exhausted yet exhilarated.

Fred T. Korematsu Day of Civil Liberties and the Constitution in Arizona (2018 to present):

I have worked with the Governor's Office, the Secretary of State, the Arizona Legislature, and the Arizona Asian American Bar Association to recognize Fred T. Korematsu and the rule of law in Arizona. Fred T. Korematsu spent his life fighting for the rule of law. His daughter, Karen, continues his work. Arizona has shown itself a leader in that regard, adopting resolutions and proclamations supporting Fred T. Korematsu and his work on the rule of law.

Glendale City Court Appointment Commission (2014 to present):

I serve as the Maricopa County Superior Court representative on the Commission. The Commission is charged with evaluating and interviewing applicants for openings on the Glendale City Court. The Commission then makes recommendations to the Presiding Judge.

Phoenix Ethics Review Ad Hoc Task Force (2012 to 2013):

I served on the Task Force to review the City's ethics rules and policies for employees and elected officials and to suggest changes based on best practices. The Task Force held public hearings and heard from interested groups and experts. The Task Force produced a comprehensive report identifying issues and recommending changes. The Task Force ended once we issued the final report.

Arizona State University College of Law Alumni Association (1996 to 2001):

I served on the Board of Directors from 1996 to 2001. Throughout my time on the Board, I organized and ran continuing legal education programs. I served as president from January 1999 to January 2001. During my tenure as president, Senator Jon Kyl spoke at one event, and The Honorable Sandra Day O'Connor spoke at another. The Association also endowed its first perpetual book scholarship.

Garfield Organization: A Neighborhood Alliance (1998 to 2007):

I served on the Board of Directors from October 1, 1998 to October 1, 2007. Garfield Organization is a neighborhood organization working to improve the Garfield neighborhood in downtown Phoenix.

Garfield neighborhood runs from Seventh Street on the west to Sixteenth Street on the east, and from Van Buren on the south to Interstate 10 on the north. This part of Phoenix was left to crumble

after Interstate 10 was built. It became a safe haven for drug dealing and gang violence, causing the Garfield families to live in fear.

Since the early 1990s, Garfield has been a neighborhood on the mend. In the late 1990s, I began working with Garfield Organization. As a Board member, I witnessed so many positive changes. During my tenure (though to the credit of many others), the City of Phoenix gave Garfield its historic district designation, making it the largest historic neighborhood in Phoenix. Though I am not currently on the Board, Garfield holds a place in my heart. I stay involved, including through the community probation center in the neighborhood.

Talasera Homeowners' Association (2005 to 2008):

I served on the Architectural Review Committee. I was on the original committee appointed after the developer turned control over to the homeowners. We revised the design guidelines, application process, and plant schedules. We met with homeowners who had questions.

55. List any relevant professional or civic honors, prizes, awards or other forms of recognition you have received.

- **2018 Pete Dunn Above and Beyond Award-Outstanding Ambassador of the Judges of Arizona from the Arizona Judges Association**
- **2018 Maricopa County Judicial Officer of the Year from the Sandra Day O'Connor College of Law at Arizona State University**
- **2014 Michael D. Ryan Award for Judicial Excellence from the Public Lawyers Section, State Bar of Arizona**
- **2014 Judicial Officer of the Year from the Arizona Family Support Council**
- **2005 Award for Outstanding Service from the Arizona State University College of Law Alumni Association**

56. List any elected or appointed public offices you have held and/or for which you have been a candidate, and the dates.

- **Superior Court Judge, Maricopa County Superior Court (January 2009 to present)**
- **Judge Pro Tempore, Maricopa County Superior Court (June 2007 to February 2009)**
- **Certified Election Official, Arizona Secretary of State (August 2004 to December 2009)**
- **Elections Troubleshooter, Maricopa County Elections Department (August 2004 to December 2008)**
- **Precinct Committee Person, Arizona Democratic Party (December 2004 to December 2008)**

Have you ever been removed or resigned from office before your term expired?
No.

57. Describe any interests outside the practice of law that you would like to bring to the Commission's attention.

I have strong ties to Yavapai County. For more than ten years, we have had a home in Prescott. Our neighborhood is nestled in the Prescott Dells near Willow and Watson Lakes. We are close with our neighbors and others in Prescott. I even presided over several cases in Yavapai County Superior Court when the sitting judges all faced a conflict.

Having family in Prescott has strengthened our ties to the community. We arranged for my mother to move from Pennsylvania to Prescott. She wanted to move to Arizona but wanted four seasons. We told her we could make that happen. It was the best move she ever made. She is the happiest she has ever been. And we are close by to help her.

In addition, I recently took up running. I have run several 10Ks and a half marathon. The idea of me running a half-marathon is as much of surprise to me as anyone, but friends have been very supportive and patient. I look forward to seeing where this new past time leads me.

HEALTH

58. Are you physically and mentally able to perform the essential duties of a judge with or without a reasonable accommodation in the court for which you are applying? **Yes.**

ADDITIONAL INFORMATION

59. The Arizona Constitution requires the Commission to consider the diversity of the state's population in making its nominations. Provide any information about yourself (your heritage, background, life experiences, etc.) that may be relevant to this consideration.

I grew up in a small town in central Pennsylvania. I am of Western European descent. My life, however, exposed me to other cultures and peoples. I learned to accept and value our differences. My experiences helped me acknowledge, accept, and embrace my own diversity. I apply my experiences every day in my court, ensuring I treat every person with respect and dignity.

In high school, I was selected to be a Rotary Exchange Student. I spent a year living in Chihuahua, Chihuahua, Mexico. I completed a year of study at El Colegio de Bachilleres, Plantel Numero Uno in Chihuahua, Chihuahua.

My time in Mexico was a phenomenal cultural experience. I will always treasure it. I was exposed to diverse cultures, including the native Tarahumaras. When I returned to the United States, I was fluent in Spanish at the 12th grade level in reading, writing, and speaking. I used my Spanish to assist clients and others who required assistance. And thanks to Facebook, I reconnected with my family in Mexico. Though I am no longer fluent in Spanish, I can communicate effectively.

I experienced diversity within my own family. In many ways, my family is bi-cultural. I grew up in a Pennsylvania Dutch family. My sister-in-law immigrated from Germany. When I first met my niece, she spoke only German. My sister-in-law spoke only broken English. I spoke only English and Spanish. We all learned from each other.

In the Garfield neighborhood, I worked with many ethnic and minority groups. I worked well with all of them. I worked well with the minority members at the Arizona House of Representatives, including African American, Native American, and Hispanic members.

I am an active member of Arizona Minority Judges Caucus. I work with the Arizona Supreme Court's Commission on Minorities. I have a long-term goal of developing a judicial mentorship program to improve diversity on Arizona's bench. I also am a member of the Arizona Women Lawyers Association and the Arizona Asian American Bar Association.

60. Provide any additional information relative to your qualifications you would like to bring to the Commission's attention.

I had the unique opportunity to work extensively in all three branches of state government.

- **I spent seven sessions working for the Arizona Legislature. I developed a deep respect for the work our legislators do and the importance of the Arizona Legislature's policy making role. I respect and trust the legislative process.**
- **I worked for the executive branch at the Attorney General's Office. I learned to follow and enforce the legislative policies and directives.**
- **I served the judiciary for more than ten years, including as a Maricopa County Superior Court Judge, a Maricopa County Superior Court Judge Pro Tempore, a law clerk at the Arizona Court of Appeals, Division One, and a law clerk at the Maricopa County Superior Court.**

Because of my unique experiences, I understand the judiciary's limited role. In my work on the bench, I honor the important role of each branch and have an abiding respect for the Separation of Powers' clause in Article III of the Arizona Constitution.

I recognize and value the judiciary's traditional role of resolving disputes. Cases must be decided based on the facts before the judge. Judicial independence is critical, but judges must respect the strong presumption of constitutionality accompanying all enacted legislation. Judges must interpret statutes based on the words the Arizona Legislature chose.

61. If selected for this position, do you intend to serve a full term and would you accept rotation to benches outside your areas of practice or interest and accept assignment to any court location? **Yes.**

62. Attach a brief statement explaining why you are seeking this position.

- **Attachment C**

63. Attach two professional writing samples, which you personally drafted (e.g., brief or motion). **Each writing sample should be no more than five pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing samples. Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public on the commission's website.
- **Attachment D: Professional Writing Sample # 1**
 - **Attachment E: Professional Writing Sample # 2**
64. If you have ever served as a judicial or quasi-judicial officer, mediator or arbitrator, attach sample copies of not more than three written orders, findings or opinions (whether reported or not) which you personally drafted. **Each writing sample should be no more than ten pages in length, double-spaced.** You may excerpt a portion of a larger document to provide the writing sample(s). Please redact any personal, identifying information regarding the case at issue, unless it is a published opinion, bearing in mind that the writing sample may be made available to the public on the commission's website.
- **Attachment F: Judicial Writing Sample # 1**
 - **Attachment G: Judicial Writing Sample # 2**
 - **Attachment H: Judicial Writing Sample # 3**
65. If you are currently serving as a judicial officer in any court and are subject to a system of judicial performance review, please attach the public data reports and commission vote reports from your last three performance reviews.
- **Attachment I: 2016 Public Judicial Performance Review Data Reports and Commission Votes**
 - **Attachment J: 2012 Public Judicial Performance Review Data Reports and Commission Votes)**

ATTACHMENT A

David Bruce Gass
Question 15

Judges
Arizona Superior Court
Maricopa County

<u>ADLEMAN, Jay</u> Criminal	602.372.5497	Central Court Building-12E/1204
<u>AGNE, Sara</u> Juvenile	602.506.8288	Durango Facility-2285/3
<u>ANDERSON, Arthur</u> Juvenile	602.506.0341	Southeast Juvenile-1079-1081/4
<u>ASTROWSKY, Brad</u> Family	602.372.2048	Old Court House-102/104
<u>BACHUS, Alison</u> Family	602.506.7569	Northeast Court-F/111
<u>BAILEY, Cynthia</u> Northeast Presiding/Civil	602.506.5121	Northeast Court-J/108
<u>BARTON, Janet</u> Presiding Judge	602.506.5340	Old Court House-5
<u>BERESKY, Justin</u> Family	602.372.5074	Central Court Building-6C/603
<u>BERGIN, Dawn</u> Family	602.372.2961	Northeast Court-K/110
<u>BLAIR, Michael</u> Family	602.372.0305	Old Court House-201/201
<u>BLANEY, Scott</u> Family	602.372.1095	Old Court House-106/108
<u>BRAIN, Mark H.</u> Criminal	602.372.1141	Central Court Building-12A/1201

<u>BRODMAN, Roger</u> Civil	602.372.2943	East Court Building-413
<u>BUSTAMANTE, Lori</u> Northwest Presiding/Family- Probate	602.506.0423	Northwest Regional Center-D/124
<u>CAMPAGNOLO, Theodore</u> Civil	602.372.0537	Northeast Court-G/102
<u>COFFEY, Rodrick</u> Family	602.372.1783	Southeast Facility-4D/404
<u>COHEN, Bruce</u> Civil	602.372.0686	Northeast Court-L/112
<u>COHEN, Suzanne</u> Family Presiding	602.372.1916	Central Court Building-7C
<u>COMO, Gregory</u> Criminal	602.372.0754	Central Court Building-8A/801
<u>CONTES, Connie</u> Civil	602.506.7768	East Court Building-913
<u>COOPER, Katherine</u> Family	602.506.8311	Central Court Building-5A/501
<u>COURY, Christopher</u> Civil	602.372.3876	East Court Building-914
<u>CRAWFORD, Janice</u> Southeast Presiding/Civil	602.372.0844	Southeast Facility-2E/205
<u>CULBERTSON, Kristin</u> Family	602.372.4762	Southeast Facility-4C/403
<u>CUNANAN, David O.</u> Criminal	602.372.1710	South Court Tower-13115/8C
<u>DRIGGS, Adam</u> Family	602.372.1083	Northeast Court-D/107

<u>DUNCAN, Sally Schneider</u> Criminal/SA	602.506.9042	Central Court Building-4C/402
<u>FINK, Dean M.</u> Criminal	602.506.3776	Central Court Building-12D
<u>FISH, Geoffrey</u> Criminal	602.372.1771	Central Court Building-8C/803
<u>FISK, Ronda</u> Associate Presiding Criminal	602.372.1011	South Court Tower-13400/5B
<u>FLORES, Lisa</u> Associate Presiding Juvenile Judge	602.372.0825	Old Court House-202
<u>FOSTER, George H.</u> Criminal	602.506.3892	Central Court Building-9D/904
<u>FOX, Dewain</u> Criminal	602.372.2260	Central Court Building-9C/903
<u>GARCIA, Jeanne</u> Juvenile	602.372.0610	Old Court House-302
<u>GATES, Pamela</u> Presiding Civil Department	602.506.6391	East Court Building-912
<u>GENTRY, Jo Lynn</u> Juvenile	602.372.3091	Durango Facility-2295/1
<u>GERLACH, Douglas</u> Criminal	602.372.5851	South Court Tower-13109/7D
<u>GORDON, Michael</u> Juvenile	602.372.0762	Durango Facility-2290/2
<u>GRANVILLE, Warren J.</u> Criminal	602.506.0434	South Court Tower-13103/6A
<u>GREEN, Jennifer E.</u> Juvenile	602.506.0438	Southeast Juvenile-1076-8/3

<u>HANNAH, John</u> Criminal	602.372.0759	South Court Tower- 13110/7B
<u>HARRISON, Cari A.</u> Criminal	602.506.0967	Central Court Building- 11A/1101
<u>HERROD, Michael</u> Criminal	602.372.0359	Central Court Building-7D/704
<u>HOPKINS, Stephen</u> Criminal	602.372.5561	South Court Tower-13108/7A
<u>JULIAN, Melissa</u> Family Court	602.372.0935	Northeast Court-I/106
<u>KEMP, Michael</u> Criminal	602.372.0608	South Court Tower-13104/5D
<u>KIEFER, Joseph</u> Family	602.372.6553	Northwest Regional Center- B/122
<u>KILEY, Daniel</u> Associate Presiding Civil Judge	602.372.3839	East Court Building-911
<u>KLEIN, Andrew</u> Probate Presiding Judge	602.506.4645	East Court Building-611
<u>KORBIN STEINER, Ronee</u> Family	602.506.1927	Central Court Building-6E/606
<u>KREAMER, Joseph</u> Juvenile	602.372.1764	Old Court House-301
<u>LABIANCA, Margaret</u> Family	602.372.1694	Central Court Building-6D/604
<u>LANG, Todd</u> Family	602.372.2322	Central Court Building-6A/601
<u>LEMAIRE, Kerstin</u> Family	602.506.8245	Central Court Building-6F/605

<u>MAHONEY, Margaret R.</u> Civil	602.506.0387	East Court Building-411
<u>MANDELL, Michael</u> Family	602.372.5052	Southeast Facility-2D/204
<u>MARTIN, Daniel</u> Civil	602.372.2925	East Court Building-412
<u>MARWIL, Suzanne</u> Family	602.372.1828	Southeast Facility-4A/401
<u>MCCOY, Scott</u> Juvenile	602.372.3603	Durango Facility-2280/4
<u>MEAD, Kathleen</u> Criminal	602.506.2500	Central Court Building- 11C/1103
<u>MIKITISH, Joseph</u> Criminal	602.372.1547	Central Court Building-7A/701
<u>MINDER, Scott</u> Family	602.506.0221	Central Court Building-6B/602
<u>MOSKOWITZ, Frank</u> Criminal	602.506.7140	South Court Tower-13314/8A
<u>MROZ, Rosa</u> Civil	602.372.0384	East Court Building-414
<u>MULLINS, Karen</u> Juvenile	602.372.1160	Durango Facility-2245/6
<u>MYERS, Sam</u> Criminal Presiding Judge	602.372.2940	South Court Tower-13200/5A
<u>O'CONNOR, Karen L.</u> Juvenile	602.506.0428	Southeast Juvenile-1114
<u>OTIS, Erin</u> Criminal	602.506.0306	Central Court Building- 11E/1104

<u>PADILLA, Jose</u> Juvenile	602.372.0901	Durango Facility-3285
<u>PALMER, David</u> Civil	602.372.3980	Southeast Facility-2F/206
<u>PINEDA , Susanna C.</u> Criminal	602.372.2958	South Court Tower-13111/7C
<u>POLK, Jay</u> Probate Department Associate Presiding Judge	602.372.0879	East Court Building-511
<u>PONCE, Adele</u> Family	602.372.2168	Southeast Facility-2C/203
<u>REA, John</u> Criminal	602.372.0382	South Court Tower-13102/6B
<u>RECKART, Laura</u> Family	602.506.5861	Southeast Facility-4B/402
<u>ROGERS, Joshua</u> Family	602.506.1603	Southeast Facility-3A/301
<u>RUETER, Jeffrey</u> Juvenile	602.372.5465	Southeast Juvenile-1103/7
<u>RYAN, Timothy J.</u> Juvenile Presiding Judge	602.372.3081	Southeast Juvenile-1046/1043
<u>RYAN-TOUHILL, Jennifer</u> Criminal	602.372.0920	South Court Tower-13105/5C
<u>SANDERS, Teresa A.</u> Civil	602.506.4791	East Court Building-811
<u>SINCLAIR, Joan</u> Family	602.372.4553	Southeast Facility-4E/405
<u>SMITH, James D.</u> Civil	602.372.5945	East Court Building-814

<u>STARR, Patricia</u> LCA	602.506.4164	East Court Building-613
<u>STEPHENS, Sherry K.</u> Civil	602.506.4818	East Court Building-712
<u>SUKENIC, Howard</u> Criminal	602.506.8214	Central Court Building-9A/901
<u>SVOBODA, Pamela</u> Juvenile	602.372.1983	Durango Facility-3245/12
<u>THOMASON, Timothy</u> Civil	602.506.0573	East Court Building-713
<u>THOMPSON, Peter</u> Criminal	602.372.3579	Central Court Building-7B/702
<u>UDALL, David K.</u> Juvenile	602.506.5514	Southeast Juvenile-1090-1092
<u>VANDENBERG, Lisa Ann</u> Family	602.372.6595	Northwest Regional Center-A/121
<u>VIOLA, Danielle</u> Civil	602.506.3442	East Court Building-714
<u>WARNER, Randall</u> Juvenile	602.372.2966	Durango Facility-2250/5
<u>WEIN, Kevin</u> Family	602.506.7618	Old Court House-001/001
<u>WELTY, Joseph C.</u> Associate Presiding Judge	602.372.2537	East Court Building-711
<u>WESTERHAUSEN, Tracey</u> Civil	602.506.6251	Southeast Facility-2G/207
<u>WHITEHEAD, Chuck</u> Family	602.372.8496	Northeast Court-104

WHITTEN, Christopher
Tax Presiding Judge/Civil

602.372.1164

East Court Building-612

ATTACHMENT B

David Bruce Gass
Question 15

Commissioners
Arizona Superior Court
Maricopa County

<u>ABRAMSON, Lindsay</u> Civil	602.506.3857	East Court Building-812
<u>ALBRECHT, Richard</u> Family	602.506.7822	Northeast Court-A
<u>ALLEN, Glenn</u> Juvenile	602.506.2040	Durango Facility-1219/A1215
<u>ASH, Lori</u> Special Assignment Criminal	602.506.8308	Central Court Building-203/LL1
<u>BARTH, Michael</u> Criminal-RCC	602.506.0616	Southeast Facility-2B/202
<u>BENNY, Margaret</u> Family	602.506.4203	Southeast Facility-3E/305
<u>BERNICK, Harriet</u> Criminal	602.876.8200	4th Ave. Jail
<u>BERNSTEIN, Jerry</u> Family	602.506.1190	Southeast Facility-3D/304
<u>BODOW, Keelan</u> Family	602.372.3021	Central Court Building-5D/503
<u>BRAME, Veronica</u> Juvenile	602.372.0268	Southeast Juvenile-1064/1
<u>BRICKNER, Nicole</u> Criminal	602.506.5349	Central Court Building-LL200/3
<u>CARSON, Michelle</u> Criminal	602.876.8200	4th Ave. Jail

<u>CLARKE, Terri</u> Criminal/RCC	602.506.1117	Southeast Facility-2A/201
<u>COATES, Lindsey</u> Juvenile	602.372.2053	Old Court House-211/209
<u>COVIL, Max</u> Criminal	602.506.4527	South Court Tower-13304/3D
<u>DAVIS, Marvin</u> Criminal	602.506.3151	South Court Tower-13303/6C
<u>DOODY, John</u> Criminal	602.506.1746	South Court Tower-13310/2A
<u>GARBARINO, David</u> Civil	602.372.2403	East Court Building-813
<u>GARFINKEL, Monica</u> Criminal	602.372.0001	Central Court Building-10A/1001
<u>GIALKETSIS, Cynthia</u> Juvenile	602.372.0778	Southeast Juvenile-1068/2
<u>GIAQUINTO, Laura</u> Criminal/DUI	602.372.0555	Central Court Building-8b/820
<u>GNEPPER, Gregory</u> Criminal	602.876.8200	4th Ave. Jail
<u>GUYTON, Lauren</u> Criminal/PV/DRUG	602.372.3192	Central Court Building-4B/401
<u>HARMON, Melody</u> Juvenile	602.372.3135	Durango Facility-3290/8
<u>HARRIS, Susan</u> General Stream Adjudication	602.372.4115	Central Court Building-3A
<u>HARTSELL, Roger</u> Criminal	602.506.4185	South Court Tower-13302/6D

<u>HINZ, Richard</u> Criminal	602.372.1878	South Court Tower-13305/3B
<u>HOLDING, Steven</u> Civil	602.372.3131	Northeast Court-C/105
<u>HOSKINS, Nicolas</u> Juvenile	602.506.6452	Durango Facility-11/3250
<u>IRELAND, Jacki</u> Special Assignment	602.372.0039	Central Court Building-9B/902
<u>KAPIO, Thomas</u> Criminal	602.506.0059	South Court Tower-13309/3C
<u>KAISER, Brian</u> Family	602.372.3707	Southeast Facility-1A/101
<u>KALMAN, Amy</u> Probate/Mental Health	480.344.2006	Desert Vista
<u>LAFAVE, Julie</u> Criminal/DUI	602.372.0986	Central Court Building-8D/804
<u>LAING, Utiki Spurling</u> Criminal	602.876.8200	4th Ave. Jail
<u>LYNCH, Steven</u> Civil	602.506.3915	Southeast Facility-3C/303
<u>MARQUOIT, Thomas</u> Probate	602.506.3381	East Court Building-512
<u>MATA, Julie</u> Criminal	602.372.2017	Central Court Building-10E/1004
<u>MCGUIRE, J. Justin</u> FC/PB	602.506.3809	Northwest Regional Center-C
<u>MCLAUGHLIN, Jane</u> Criminal	602.876.8200	4th Ave. Jail

<u>MILLER, Phemonia</u> Family	602.506.4067	Central Court Building-5B/504
<u>MORTON, Wendy</u> Mental Health	602.506.0959	South Court Tower-13315/2B
<u>MULLENEAUX, Christine</u> Criminal	602.506.1767	Central Court Building-LL201/2
<u>NADZIEJA, Tracy</u> Criminal	602.876.8200	4th Ave. Jail
<u>NEWCOMB, Casey</u> Family	602.506.0862	Central Court Building-5F/506
<u>NOTHWEHR, Richard L.</u> <u>(Rick)</u> Criminal/Mental Health	602.372.0969	South Court Tower-13314/2D
<u>OWENS, Bernard C.</u> Family	602.372.2490	Central Court Building-5C
<u>PASSAMONTE, Carolyn</u> <u>K.</u> Probate	602.372.0270	East Court Building-513
<u>POPKO, Sigmund</u> Lower Court Appeals	602.506.4164	East Court Building-614
<u>REES, Brian</u> Family	602.506.7860	Northeast Court-B/103
<u>RICHTER, Virginia</u> Family	602.506.3366	Central Court Building-5G/507
<u>RUMMAGE, James</u> Probate	602.506.6086	Northeast Court-E/109
<u>RUSSELL, Andrew</u> Spec Assn. Criminal	602.506.0039	Central Court Building-12C/1202
<u>SCHWARTZ, Aryeh D.</u> Probate	602.372.0756	East Court Building-514

<u>SEYER, David</u> Criminal/RCC	602.372.0740	South Court Tower-13308/3A
<u>SMITH, Shellie</u> Juvenile	602.372.1232	Southeast Juvenile-5/1105
<u>SPENCER, Barbara L.</u> Presiding Commissioner/Criminal	602.372.0987	Central Court Building-10D/1002
<u>VAN WIE, Annielaurie</u> Criminal	602.372.4516	Central Court Building-1003/10C
<u>WASHINGTON, Eartha K.</u> Juvenile	602.372.1979	Durango Facility-3295/7
<u>WHITE, Susan</u> Civil/Probate	602.372.0425	Southeast Facility-3B/302
<u>WILLIAMS, Paula</u> Criminal	602.506.4572	South Court Tower-13311/2C
<u>WINGARD, William</u> Criminal	602.506.4569	Central Court Building-11D/1102
<u>YOST, Joshua</u> Juvenile	602.506.6081	Durango Facility-3280/10
<u>ZABOR, Melissa</u> Criminal	602.876.8200	4th Ave. Jail

ATTACHMENT C

David Bruce Gass
Question 62:

Brief Statement Explaining Why I Am Seeking This Position

I want to serve Arizona as a judge on the Court of Appeals because it merges three of my passions: my desire to serve others; my love of learning; and my trust in, and commitment to, the rule of law.

As a Superior Court Judge, I have demonstrated the skills and experience needed to serve on the Court of Appeals. I have shown I can parse complicated legal situations down to the core issues, think analytically, and solve problems within the parameters laid down by the Arizona Legislature. I also have demonstrated the people skills and temperament a judge needs. My Judicial Performance Review results show I possess all the essential judicial qualities.

Beyond that, public service is ingrained in me. My grandfather served as a police officer and later as Chief of Police. My grandmother worked with disabled children and adults. My father began his career as a minister. My earliest memories are living in a parsonage next to a church. When my parents could not make ends meet, my father left the ministry and both my parents began teaching. My father taught until the day he died. My mother retired after more than thirty years in the classroom. Both loved helping students learn.

I learned from their examples. I cannot sit idly by if my involvement means I can make a difference. The following are a few examples of my commitment to service:

- I helped the Garfield Organization improve the Garfield neighborhood even though I never lived or owned property there. Garfield was facing blight and crime after decades of being overlooked. I was honored to help the diverse people in Garfield. They make Phoenix a better place.
- My work with Arizona Town Hall similarly focuses on making Arizona better and stronger. I have been involved for more than twenty years, attended six Town Halls, served as a report co-chair twice, and served as a recorder four times. I also serve on the training committee. The participants come together to engage in a civil discourse about important issues for the sole purpose of improving Arizona. I leave every Town Hall energized.
- My work with Arizona Anytown Leadership Camp is one of my most fulfilling endeavors. I spend a week teaching teenage delegates about citizenship, personal responsibility, and conflict resolution. I work with them to develop the character and strength they need to lead. I also learn something from each delegate. They inspire me.

By participating in community organizations and similar efforts, I also pursue my lifelong passion for learning.

Long ago, I discovered my interest in the rule of law. In fifth grade, my teacher, Gladys Rohrbach, said if I wanted to be President, I had to be a lawyer. With those words, she gave my life direction. In high school, I learned about the United States Constitution, the brilliance of our structure of government, and the storied history of the rule of law in this country.

In law school, I gained an appreciation for the Arizona Constitution. I was intrigued by the differences between the words Arizona's founders chose versus those our nation's founders chose. Both groups chose their words carefully, and we must honor their words. I was intrigued Arizona's founders decided to include an express separation of powers clause in Article III. I was sufficiently intrigued I arranged to view the original document at the Arizona State Library and Archives. Wearing white gloves, I turned the pages and read the original text.

I studied the text of the United States Constitution. Then I read the Federalist Papers. I studied the text of the Arizona Constitution. Then I read John S. Goff's Records of the Arizona Constitutional Convention. His book is long since out of print, but I was fortunate to locate copy I could purchase for my own. Over time, I also acquired Arizona Session Laws from 1912 (Arizona's first legislative session), the 1912 Criminal Code, and the 1912 Legislative Blue Book for Arizona. These pieces of history and glimpse into Arizona's founders help me understand Arizona and how our laws originated.

In pursuing my passion for the law, I have been blessed with gifted mentors. I am indebted and grateful to those who shaped who I am. Each empowered me with the skills, experience, and temperament needed to serve on the Court of Appeals.

The Honorable Ruth V. McGregor leads the pack. She kick started my legal career by giving me the opportunity to work as her law clerk. She gave me a front row seat at the Court of Appeals. She educated me on the rule of law, and she taught me to have faith in the system our founders created. She planted the seed leading me to apply to serve on the Court of Appeals as she did when I first met her.

After years honing my skills in private practice, I served as counsel at the Arizona House of Representatives where I met great mentors on both sides of the aisle, including Speaker Jake Flake and Senator Jack Brown. Monsignor Edward J. Ryle, who represented the Catholic Diocese, served as a spiritual and professional guide. These three leaders, and so many others, taught me a deep and abiding respect for the legislative branch's vital policy making role. They taught me what it means to respect and trust the separation of powers. I will bring their lessons with me to the Court of Appeals.

I have been a lawyer for twenty-five years, twenty of them in service to the citizens of Arizona. Though all my endeavors have been rewarding, I find the most satisfaction in my role in the justice system. I truly enjoy working as a trial judge. I find satisfaction in resolving legal disputes, especially when all involved have been heard and respected. If granted the privilege to serve on the Court of Appeals, I will bring all of my experience to bear to ensure a stronger future for Arizona and its citizens.

ATTACHMENT D

I. *FACTUAL SUMMARY*

A. *THE ACCIDENT AND MARLENE SALTER’S CLAIMS*

On July 31, 1995, Stephen Salter loaned his Ford F150 pick up truck (“the Truck”) to his father, Stanley Salter. See Statement of Facts (“SOF”) at ¶ 1. While driving the Truck, with Marlene Salter riding in the passenger seat, Stanley was involved in an accident. SOF at ¶ 2. Marlene was seriously injured. SOF at ¶ 3. Following the accident, Marlene presented a claim for her injuries to American Family and Continental. SOF at ¶ 4.

Because of the extent of Marlene’s injuries, American Family tendered its policy limits under AmFam Auto, which were \$100,000 per person. SOF at ¶ 5. In exchange for that payment, Marlene executed a release that protects Stephen and Stanley from all personal liability to Marlene beyond the coverage available under Con. Auto and AmFam Excess. SOF at ¶ 6.

The release stated:

Execution of this release shall not impair, or affect in any manner,
the right of Marlene Salter to pursue a claim under Stephen
Salter’s personal liability umbrella coverage with American
Family or her own coverage

SOF at ¶ 7.

Nearly six months after Marlene executed the release with the above language, she filed an action against Stanley, Cause No. CV97-10206, Maricopa County Superior Court (“the Lawsuit”). SOF at ¶ 8. On June 9, 1997, Stanley tendered defense of the Lawsuit to Continental. SOF at ¶ 9. On June 13, 1997, Mr. Jerre Guerzon of Continental tendered the defense of the lawsuit to American Family, saying:

[T]his is to serve notice that we are hereby tendering the defense
and indemnity of our insured, Stanley Salter, in the indicated

lawsuit. Should you decline this tender and Continental Casualty is forced to defend Mr. Salter, we will be looking to your company for reimbursement of all costs incurred in providing the defense....[O]ur liability coverage is excess only on non-owned automobiles. At most, we would share on a pro-rata basis with your umbrella policy.

SOF at ¶ 10. Rather than leave Stanley without a defense, American Family hired counsel to represent him and continued paying for his defense. SOF at ¶ 11.

B. THE POLICIES

Three liability policies with four different coverages apply to the accident. SOF at ¶ 12. American Family issued two policies, and Continental issued one that contained two coverages. SOF at ¶ 13.

1. AmFam Auto

AmFam Auto affords primary automobile liability coverage. SOF at ¶ 14. Stephen is the named insured under that policy. SOF at ¶ 15. AmFam Auto lists the Truck as an owned vehicle. SOF at ¶ 16. The liability limits are \$100,000 per person, \$300,000 per accident. SOF at ¶ 17. The insuring clause of AmFam Auto says:

We will pay compensatory damages an **insured person** is legally liable for because of **bodily injury** and **property damage** due to the **use** of a **car** or **utility trailer**.

SOF at ¶ 17. The definition of an “**insured person**” includes anyone while using the Truck with Stephen’s permission. SOF at ¶ 18.

2. Con. Auto

Continental wrote a single policy that afforded two types of coverage, Con. Auto and Con. Excess. SOF at ¶ 19. Stanley and Marlene were both named insureds on this policy. SOF at ¶ 20. Con. Auto’s limits are \$250,000 per person, \$500,000 per accident. SOF at ¶ 21. The insuring clause of Con. Auto says:

We pay on your behalf claims which you or any **covered person** are legally liable, including pre-judgment interest awarded against you or any **covered person**, up to our limit of liability; except as

excluded by the provisions listed in the “**Liability, Uninsured/Underinsured Motorists and Medical Expense Losses We Do Not Cover**” and the “**Things We Do Not Cover**” sections of this policy.

SOF at ¶ 22. Neither of the two referenced exclusions sections mentions “other insurance.” SOF at ¶ 23. Stanley is a covered person under Con. Auto. SOF at ¶ 24.

3. Con. Excess

The insuring clause in Con. Excess says:

We will pay damages for which a **covered person** become [sic] legally liable due to **personal injury, bodily injury or property damage** up to the limit of liability shown in the coverage summary for “**Optional Excess Liability**” subject to the **minimum retained limit** and to the provisions listed in the “**Excess Liability Coverage Losses We Do Not Cover**” section.

SOF at ¶ 25. Stanley is a “covered person” under Con. Excess. SOF at ¶ 26. The referenced exclusion section does not mention “other insurance.” SOF at ¶ 27. Con. Excess defines the term “minimum retained limit” as

. . . the greater of

1. The total limits of any other insurance that applies to the **occurrence** which:
 - a. Are available to a **covered person**; . . .
2. The applicable deductible amount shown in the coverage summary.

SOF at ¶ 28.

Con. Excess defines “[u]nderlying policy” or “underlying insurance” [as] any policy providing the **covered person** primary liability insurance.” SOF at ¶ 29. Here, AmFam Auto and Con. Auto qualify as “underlying insurance.” SOF at ¶ 30. Finally, Con. Excess does contain an “other insurance clause.” SOF at ¶ 31.

4. *AmFam Excess*

AmFam Excess affords excess liability coverage only. SOF at ¶ 32. The insuring clause states:

We will pay up to **our limit**, compensatory damages for which an **insured** becomes legally liable for **injury** caused by an **occurrence** covered by this policy. This coverage applies only to damages in excess of the **primary limit**.

The policy goes on to define “primary limit” as

a. If the loss is covered by **underlying insurance** listed in the declarations, the total of:

- (1) The applicable **limits** of that insurance; and
- (2) The amount recoverable under any other insurance available to the **insured**.

SOF at ¶ 33.

AmFam Auto is coverage available under subsection A.(1) as a primary limit above. SOF at ¶ 34. Con. Auto’s coverage of \$250,000 is “other insurance” available to the insured, Stanley Salter, under the circumstances of this accident under subsection A.(2). SOF at ¶ 35. As with Con. Excess, AmFam Excess contains an “other insurance” clause. SOF at ¶ 36.

II. *CON. AUTO IS PRIMARY OVER CON. EXCESS AND AMFAM EXCESS.*

A. A.R.S. § 28-1170.01.B HAS NO APPLICATION TO DETERMINE THE PROPORTIONATE LIABILITY BETWEEN CON. AUTO, CON. EXCESS, AND AMFAM EXCESS.

Because of A.R.S. § 28-1170.01.B,¹ American Family accepted primary liability over all other available insurance under AmFam Auto. Subsection B of A.R.S. § 28-1170.01 says:

Except as provided in subsection A, if two or more policies

¹ In 1997, after the accident, the Arizona Legislature renumbered A.R.S. § 28-1170.01 as 28-4010.B and then 28-4080.B. The language of the relevant subsection was not changed. For purposes of this motion, American Family will use the statutes as they were numbered when the accident occurred.

affording valid and collectible liability insurance apply to the same motor vehicle that is involved in an occurrence out of which a liability loss arises, it is conclusively presumed that the insurance afforded by that policy in which the motor vehicle is described or rated as an owned automobile is primary and the insurance afforded by any other policy or policies is excess.

Here, the Truck was listed and rated as an owned vehicle under AmFam Auto. Therefore, following the accident, American Family agreed to provide primary coverage for Stanley Salter under AmFam Auto. ²

A.R.S. § 28-1170.01, however, does not apply to the determination of proportionate liability between American Family and Continental with regard to the three remaining coverages: (1) Con. Auto, (2) Con. Excess, and (3) AmFam Excess. See A.R.S. § 28-1170.G;³ see also *Ormsbee v. Allstate Ins. Co.*, 176 Ariz. 109, 111 n.1, 859 P.2d 732, 734 n.1 (1993); *Prudential*, 259 Ariz. Adv. Rep. 59, 1997 Ariz. App. LEXIS 236, *10-21. In *Ormsbee*, the Arizona Supreme Court recognized that the legislature in A.R.S. § 28-1170.G exempted excess liability coverage “from the mandatory requirements of the Safety Responsibility Act.” See 176 Ariz. at 111 n.1, 859 P.2d at 734 n.1. Similarly, *Prudential* recently recognized that any coverage in excess of the required \$15,000 per person/\$30,000 per accident was not subject to the Financial Responsibility

² As discussed below, A.R.S. § 28-1170.G says that any coverage in excess of that required under the financial responsibility laws for the State of Arizona is not governed by chapter 28. See *Prudential v. Estate of Rojo-Pacheco*, 259 Ariz. Adv. Rep. 59, 1997 Ariz. App. LEXIS 236, *10-21 (App., Dec. 23, 1997). Here, AmFam Auto afforded coverage in excess of Arizona’s financial responsibility limits of \$15,000 per person and \$30,000 per accident. A.R.S. § 28-1170.01 therefore does not apply to the liability coverage available under AmFam Auto in excess of \$15,000 per person, \$30,000 per accident. Nonetheless, American Family in this case has chosen not to pursue that defense and instead paid the AmFam Auto limits of \$100,000. See *id.*

³ In 1997, after the accident, the Arizona Legislature renumbered A.R.S. § 28-1170.G as 28-4079.D and then 28-4009.D. The language of the relevant subsection was not changed. For purposes of this motion, American Family will use the statutes as they were numbered when the accident occurred.

Act. See 259 Ariz. Adv. Rep. 59, 1997 Ariz. App. LEXIS 236, *10-21. Subsection G of A.R.S.

§ 28-1170 says:

A policy that grants the coverage required for a motor vehicle liability policy may also grant lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy, **and the excess or additional coverage is not subject to this chapter.** With respect to a policy that grants the excess or additional coverage, the term "motor vehicle liability policy" applies **only** to that part of the coverage that is required by this section. [Emphasis added.]

As the Arizona Supreme Court has recognized, the legislature, under A.R.S. § 28.1170.G, unequivocally exempted excess liability coverages such as AmFam Excess and Con. Excess from the Safety Responsibility Act. See *Ormsbee*, 176 Ariz. at 111 n.1, 859 P.2d at 734 n.1. A.R.S. § 28-1170.01 is part of the Safety Responsibility Act. Continental, therefore, cannot rely on A.R.S. § 28-1170.01 to establish the proportionate liability between it and American Family. Rather, this Court must look to Arizona cases that have addressed this issue.

B. IN ARIZONA, PRIMARY INSURANCE COVERAGES, SUCH AS CON. AUTO, MUST BE EXHAUSTED BEFORE COVERAGE IS TRIGGERED UNDER EXCESS LIABILITY COVERAGES SUCH AS CON. EXCESS AND AMFAM EXCESS.

Under Arizona law, primary insurance policy limits must be exhausted before an excess insurer is required to pay on a loss. See *Arizona Joint Underwriting Plan v. Glacier Gen. Assurance Co.*, 129 Ariz. 351, 631 P.2d 133 (App. 1981); *American Continental Ins. Co., Inc. v. American Cas. Co.*, 183 Ariz. 301, 903 P.2d 609 (App. 1995). Arizona has long recognized the difference between primary and excess insurance coverage. See *Arizona Joint Underwriting Plan*, 129 Ariz. at 353, 631 P.2d at 135.

Arizona Joint Underwriting addressed proportionate liability of three insurers under four separate liability insurance policies. Two policies issued by MICA and one policy issued by Glacier General Assurance Company ("Glacier") were primary insurance policies. The fourth

policy, issued by Arizona Joint Underwriting, provided excess liability coverage above the underlying insurance. *Arizona Joint Underwriting* concluded that “it would be a windfall to Glacier, which must be considered along with MICA as Hayden’s primary insurers, to pay nothing merely because a fellow primary insurer had additional excess coverage.” 129 Ariz. at 354, 631 P.2d at 136.

Here, Continental similarly seeks a windfall merely because Stephen Salter had additional excess coverage with American Family. Arizona courts consistently have held that excess or umbrella insurance policies do not share responsibility to pay for damages on a pro-rata basis with insurance policies that are designed to be primary. *See Arizona Joint Underwriting Plan*, 129 Ariz. at 354, 631 P.2d at 136; *see also American Continental Ins. Co., Inc. v. American Cas. Co.*, 183 Ariz. 301, 903 P.2d 609 (App. 1995) (recognizing without objection that the trial court held that the umbrella policy was excess over both underlying primary insurance policies).

This result in *Arizona Joint Underwriting Plan* is consistent with the purpose of excess or umbrella insurance. *See* 129 Ariz. at 354, 631 P.2d at 136. Excess insurance, at the time of purchase, is intended to be excess over primary insurance coverage. *See id.* Here, American Family and Continental expressed their intent that their respective excess liability coverages would be excess over all available primary coverage in the insuring agreement in the policies. The insuring clause in each establishes that the excess coverage applies only to damages in excess of the underlying insurance. Under both Con. Excess and AmFam Excess, Con. Auto’s coverage of \$250,000 is “other insurance” available to the insured, Stanley Salter, for this accident. Con. Auto’s coverage, therefore, must be exhausted before either American Family or Continental must pay for damages under their respective excess liability coverages.

III. CON. EXCESS AND AMFAM EXCESS SHOULD PAY ANY DAMAGES THAT MARLENE SALTER SUSTAINED IN EXCESS OF \$350,000 ON A PRO RATA BASIS.

When two policies are available affording the same type of coverage, such as two excess liability policies, to cover the same occurrence, and each policy contains an “other insurance” clause, Arizona treats the clauses as mutually repugnant and the loss is pro-rated between the two insurers. *See State Farm Mut. Auto. Ins. Co. v. Bogart*, 149 Ariz. 145, 717 P.2d 449 (1986). Both Con. Excess and AmFam Excess contain “other insurance” clauses. As such, they are mutually repugnant. *See Bogart*, 149 Ariz. at 148, 717 P.2d at 452. Therefore, Continental and American Family must share the cost of any damages in excess of the underlying primary liability limits on a pro-rata basis. Here, AmFam Excess’ limits are \$1,000,000 while Con. Excess’ limits are \$1,500,000. AmFam Excess therefore should be responsible for two-fifths ($\$1,000,000/2,500,000$) of any damages in excess of the underlying \$350,000 in primary coverage and Con. Excess should be responsible for three-fifths of any damages in excess of \$350,000 ($\$1,500,000/2,500,000$).

IV. BECAUSE MARLENE EXECUTED A RELEASE THAT PROTECTS THE PERSONAL ASSETS OF STANLEY AND STEPHEN, CONTINENTAL HAS A DUTY TO ASSUME STANLEY’S DEFENSE AND SHOULD REIMBURSE AMERICAN FAMILY FOR EXPENSES THAT AMERICAN FAMILY ALREADY HAS INCURRED.

Because Con. Auto affords primary insurance between \$100,000 and \$350,000, Con. Auto must defend Stanley Salter in the Lawsuit and, therefore, must reimburse American Family the costs it incurred in defending Stanley.

Once the primary automobile insurer extinguishes its contractual duty to defend an insured, the next primary insurer must step up to defend the insured. *See California Cas. Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, 185 Ariz. 165, 170-71, 913 P.2d 505, 510-511 (App. 1996). In *California Casualty*, the insurer with the next level of coverage declined to assume the insured’s defense after the claimant signed a release limiting any further recovery to insurance

policy coverages. The primary insurer defended the insured, but sought to recover the cost of defense from the insurer with the next level of coverage. *California Casualty* held that the primary automobile insurer extinguished its duty to defend the insured once the claimant executed the release, which had “the effect of protecting [the insured’s] personal assets.” *See id.* Once the claimant signed such a release, the insurer with the next level of liability coverage is responsible for paying for the insured’s defense. *See id.* *California Casualty* held that the primary insurer could recover any attorneys’ fees and costs incurred in the ongoing expense of defending the insured from the other insurer under the doctrine of equitable estoppel. *See id.*

This case is analogous to *California Casualty*. Here, AmFam Auto extinguished its duty to defend Stanley once Marlene executed a full and final release against Stephen and Stanley with the exception that execution of the release did “not impair or affect in any manner, the right of Marlene to pursue a claim under Stephen’s personal liability umbrella coverage with American Family or her own coverage with Continental.” SOF at ¶ 37. Marlene executed that release on January 2, 1997. SOF at ¶ 38. American Family, therefore, is entitled to recover any attorneys’ fees or costs expended in defending Stanley or Stephen from the date of that release under the doctrine of equitable subrogation. *See California Casualty*, 185 Ariz. at 170-71, 913 P.2d at 510-11. Because Marlene did not file her action against Stanley until June 1997, American Family is entitled to recover all defense-related attorneys’ fees and litigation costs.

V. CONCLUSION

Even though Stanley Salter had \$250,000 in primary automobile liability coverage with Continental and excess liability coverage of \$1,500,000, Continental seeks to avoid all liability in this matter unless Marlene’s damages exceed \$100,000. Towards that end, Continental

disregards unequivocal language in the Arizona Safety Responsibility Act, in controlling Arizona case law, and in the applicable policy coverages. Moreover, Continental's position completely disregards the realities of the purpose of the insurance policies at issue.

Based on the Arizona Safety Responsibility Act, controlling decisions from Arizona courts, the relevant policy language, and the underlying purpose of the insurance coverages at issue here, this Court must find that: (1) Con. Auto is primary over the excess liability coverages in Con. Excess and AmFam Excess, both for indemnifying Stanley Salter and for defending him; (2) that any damages in excess of \$350,000 must be shared on a pro-rata basis, between Con. Excess and AmFam Excess; and (3) that under the doctrine of equitable subrogation, Continental must reimburse American Family for the attorneys' fees and litigation costs American Family has expended in defending Stanley Salter in the Lawsuit because American Family's duty to defend Stanley under AmFam Auto was extinguished when Marlene Salter executed the release on January 2, 1997, six months before she initiated any litigation.

ATTACHMENT E

ISSUES

1. Thomas Wright was injured when Nelson Johnson III took his parents' car and caused an accident. Nelson Johnson III was insured under his parents' homeowners policy with American Family, which excludes coverage for liability arising out of the operation or use of an automobile. Does American Family's homeowners policy exclude coverage for Mr. Wright's automobile accident-related injuries?
2. When the car accident occurred, Nelson Johnson III was driving under the influence of alcohol. He was later convicted of aggravated assault for his driving that day. American Family's homeowners policy excludes coverage for liability caused by an insured's "violation of any criminal law for which [the] insured is convicted" and "for knowingly permitting . . . the illegal consumption of alcohol beverages by an underage person." Does American Family's policy exclude coverage for liability created by Nelson Johnson III's criminal conduct?

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS

A. Mr. Wright Was Injured In A Car Accident.

At approximately 1:00 a.m. on January 31, 1998, Nelson Johnson III was driving a car that his parents owned. See American Family's Statement of Facts In Support Of Its Summary Judgment Motion ("SOF"), at ¶3a.4 While driving the car, Nelson Johnson III was involved in a car accident with Mr. Thomas C. Wright. SOF, at ¶3b. Mr. Wright was a pedestrian at the time. SOF, at ¶3c. Mr. Wright allegedly suffered serious injuries in the car accident. SOF, at ¶3d.

4 For purposes of this motion, American Family accepts as true Mr. Wright's allegations in his lawsuit against Nelson Johnson III and his parents.

Mr. Wright sued Nelson Johnson III, Johnson's parents, and a store that allegedly provided alcohol to Nelson Johnson III, who was a minor at that time. SOF, at ¶3e. Mr. Wright alleges that Nelson Johnson III was intoxicated when the car accident occurred. SOF, at ¶3f.

Mr. Wright acknowledges that Nelson Johnson III was underage at the time and knowingly consumed alcoholic beverages as an underage person. SOF, at ¶3g. The amended complaint says that Nelson Johnson III and other minors "reached and implemented their decision to drink alcohol and drive between various locations." SOF, at ¶3h.

Specifically, the amended complaint says that Nelson Johnson III and others "were drinking alcoholic beverages, pursuant to a plan and/or agreement to purchase, possess and consume alcoholic beverages as they drove between various locations in the Phoenix area." SOF, at ¶i. The amended complaint adds that when Nelson Johnson III and the others decided to "drink alcohol and drive between various locations, they were aware that it was illegal: '(a) to drink and drive a motor vehicle; [and] (b) purchase and consume alcoholic beverages while under twenty-one (21) years of age . . .'" SOF, at ¶3j.

Mr. Wright alleges that Nelson Johnson III's parents are liable for the injuries he sustained in the car accident. SOF, at ¶3k. The complaint says that Nelson Johnson III's parents should be held liable because they "were aware of his drinking and driving and failed to prevent him from taking the vehicle." SOF, at ¶3k. The complaint says they "were aware that defendant Johnson III had taken their car without permission in the past, and they still left keys in an area that was easily and readily accessible to defendant Johnson III." SOF, at ¶3l. The complaint continues, alleging that the parents "were also aware that defendant Johnson III drank alcoholic beverages to the point of intoxication, even though he was under the legal drinking age." SOF, at ¶3m. The complaint then says that, "Defendant Johnson III drove the motor vehicle owned by

defendants Johnson while under the influence of alcoholic beverages. At the time of his driving, his actions were reckless, careless and negligent and he collided with Thomas C. Wright, a pedestrian.” SOF, at ¶3n.

B. The Policy Excludes Coverage For Bodily Injury Arising Out Of The Use And Operation Of A Motor Vehicle.

Nelson Johnson III’s parents carried an American Family automobile policy (number 0408 0306 05 78 FPPA AZ) on the car that Nelson Johnson III was driving, and an American Family homeowners policy (number 02PH-4332-01-58-PH03-AZ). SOF, at ¶4. The homeowners policy at issue here covered Nelson Johnson III and his parents for “compensatory damages for which any insured is legally liable because of bodily injury or property damage caused by an occurrence covered by this policy.” SOF, at ¶5. Occurrence means “an accident, including exposure to conditions, which results in . . . bodily injury or . . . property damage.” SOF, at ¶6.

The homeowners policy excludes coverage for car accident related injuries. The policy exclusion reads:

16. **Vehicles.**
 - a. **We will not cover bodily injury or property damage** arising out of the ownership, supervision, entrustment, maintenance, operation, use, loading or unloading of any type of motor vehicle, motorized land conveyance or trailer . . .
 - b. **We will not cover bodily injury or property damage** arising out of any vicarious parental liability, whether or not statutorily imposed by law, for the actions of a child or minor regarding any type of vehicle described in a. above.

SOF, at ¶7.

The automobile exclusion applies even if the claims against an insured are for imputed

liability, as long as the injuries are car accident related. SOF, at ¶8. The policy directly addresses any effort to create coverage for imputed liability for otherwise excluded injuries, saying:

9. **Imputed Liability.** We will not cover **bodily injury** or **property damage** arising out of any liability imputed to any insured which is otherwise excluded in this policy.

SOF, at ¶8.

C. **The Homeowners Policy Excludes Bodily Injury Arising Out Of Any Insured's Criminal Act.**

The criminal acts exclusion says:

17. **Violation of Law.** We will not cover **bodily injury** or **property damage** arising out of:
 - a. violation of any criminal law for which any insured is convicted . . .

SOF, at ¶9. Mr. Wright concedes that Nelson Johnson III was convicted of aggravated assault as a result of the car accident. SOF, at ¶10.

The homeowners policy further excludes bodily injury arising out of the illegal underage consumption of alcohol by any insured. That exclusion says:

8. **Illegal Consumption of Alcohol.** We will not cover **bodily injury** or **property damage** arising out of any **insured's** knowingly permitting or failing to take action to prevent the illegal consumption of alcohol beverages by an underage person.

SOF, at ¶10. Mr. Wright says Nelson Johnson III, a minor, illegally consumed alcohol.

II. **THE JOHNSONS' HOMEOWNERS POLICY EXCLUDES COVERAGE FOR ALL BODILY INJURY THAT MR. WRIGHT SUFFERED IN THE CAR ACCIDENT**

A. **The Automobile Exclusion Applies Directly To Mr. Thomas Wright's Claim.**

Homeowners insurance is not intended to protect insureds for negligent driving. Indeed, homeowners policies universally exclude coverage for liability arising out of the use or ownership of an automobile. The purpose of the automobile exclusion is to “dovetail” homeowners insurance with automobile insurance:

This (dovetail) theory simply holds that any one occurrence can only be covered by either the automobile or the homeowner's policy -- but not both. That mutually exclusive effect is the result of the exclusionary clause of the homeowner's policy acting as the mirror image of the inclusionary clause of the automobile policy. The two coverages dovetail, the one filling the gaps created by the other. Automobile-related occurrences are then within the sole province of the automobile policy.

Pedersen v. Republic Ins. Co., 72 Md. App. 661, 532 A.2d 183, 189 (1987).

The Arizona Supreme Court recently adopted the dovetail theory of an automobile exclusion in *Allstate Ins. Co. v. Johnston*, 298 Ariz. Adv. Rep. 48, 48, 984 P.2d 10 (1999). Johnston was a passenger in a Jeep that was stopped at an intersection. Another passenger in the Jeep exchanged words with the occupants of a truck. The truck occupants threatened to “get the gun,” and the Jeep then sped off with the truck in hot pursuit. When the truck pulled alongside the Jeep, the Jeep driver saw the truck passenger, DeLind, gesture as if he had a gun. The Jeep driver then swerved out of control injuring Johnston.

Johnston sued DeLind, the truck passenger who had made the threatening gesture. DeLind tendered the defense to Allstate under his parents’ homeowners policy. Allstate filed a declaratory judgment action arguing that the policy did not cover Johnston’s injuries because they arose out of the use of a vehicle and thus came within the automobile exclusion.

The Supreme Court agreed with Allstate, and held that the automobile exclusion barred coverage for Johnston’s injuries. Initially, the Court noted the dovetail relationship between

automobile insurance and homeowners insurance:

Automobile policies cover losses arising out of the use or occupancy of motor vehicles. Conversely, homeowners policies exclude coverage for injuries arising out of the use or occupancy of motor vehicles.

Johnston, 298 Ariz. Adv. Rep. at 48, 984 P.2d at 10.

The court added that Arizona's "cases tend to fit together so that one policy or the other generally provides coverage because one policy's inclusion is the other policy's exclusion." *Id.* at 48, 984 P.2d at 11. The key is whether the injuries are causally connected to the use of the automobile:

[T]he "arising out of" language requires a causal connection between the injuries and the vehicle. If a causal connection exists, there is coverage under the automobile policy, but not under the homeowners policy. If a causal connection does not exist, there is coverage under the homeowners policy but not under the automobile policy.

Id.

Here, as in *Johnston*, the Johnsons' homeowners policy excludes coverage for Mr. Wright's injuries. Nelson Johnson III's use of his parents' car is causally connected to Mr. Wright's injuries. This is the pivotal issue to the coverage analysis.

B. The Claims Against Nelson Johnson III's Parents For Imputed Liability And For Negligent Supervision Are Excluded.

1. Claims of imputed liability are excluded.

Mr. Wright seeks to impute liability to Nelson and Lucy Johnson for their son's negligence on two grounds: (1) statutory liability under Arizona's financial responsibility act;⁵

⁵ A.R.S. §28-3160.B provides "negligence or wilful [sic] misconduct of a minor when driving a motor vehicle on a highway is imputed to the person who signs the application of the minor for a permit or license."

and (2) under the family purpose doctrine. Both of these claims necessarily arise out of the use of an automobile. The statutory liability applies to the parents only if their minor child is liable for negligence or willful misconduct “when driving a motor vehicle on a highway.” See A.R.S. §28-3160. The same is true of the family purpose doctrine, which imputes liability to a parent only if a motor vehicle is responsible for the injury. See *Blocher v. Thompson*, 169 Ariz. 182, 186, 818 P.2d 167, 171 (App. 1991). These claims therefore are not covered because under the automobile exclusion, the homeowners policy excludes injuries arising out of Nelson Johnson III’s operation of an automobile.

Mr. Wright does not create coverage by asserting the claims against Nelson Johnson III’s parents. The policy simply does “not cover bodily injury or property damage arising out of any liability imputed to any insured which is otherwise excluded in this policy.” Mr. Wright’s automobile related injuries are not covered because of the automobile exclusion, regardless of how Mr. Wright attempts to impute liability to Nelson Johnson III’s liability to his parents.

2. The negligent supervision claim is barred by the automobile exclusion.

Mr. Wright seeks to avoid the automobile exclusion by couching his claim against the Johnsons as a negligent supervision claim. However, the mere allegation of a “separate tort” such as negligent entrustment or negligent supervision does not trigger coverage under a homeowners policy. See *Behrens v. Aetna Life & Cas.*, 153 Ariz. 301, 302, 736 P.2d 385, 386 (App. 1987); *Lumbermens Mutual Casualty Co. v. Kosies*, 124 Ariz. 136, 602 P.2d 517 (App. 1979).⁶

⁶ See generally, *Lahey v. Benjou*, 759 P.2d 855, 857 (Colo. App. 1988) (no coverage for insured's alleged negligent failure to supervise his daughter's driving); *Farmers Ins. Group v. Nelsen*, 715 P.2d 492, 493 (Or. App. 1986) (no coverage for claim alleging parents' negligent supervision of child operating a dirt bike); *Taylor v. American Fire & Cas. Co.*, 925 P.2d 1279 (App. 1996) (no coverage for claim alleging parents’ negligent supervision when daughter

Here, Mr. Wright claims Nelson Johnson III's parents negligently supervised him by leaving car keys in a place where he could get them, knowing he might take the car after drinking alcohol. This claim is not covered because it arises out of the ownership and use of the car. *Behrens*, 153 Ariz. at 302, 736 P.2d at 386; *Lumbermens*, 124 Ariz. at 138, 602 P.2d at 519.7

Behrens is directly analogous to our facts. See 153 Ariz. at 302, 736 P.2d at 386. In *Behrens*, the plaintiff was injured while water-skiing. The plaintiff then claimed the defendants negligently entrusted the boat to their son and negligently failed to supervise the operation of the boat. *Behrens* upheld summary judgment for the insurance company on the grounds that the watercraft exclusion (identical to the motor vehicle exclusion) barred claims for negligent entrustment and negligent supervision. In rejecting coverage for these claims, *Behrens* held: "A claim for negligent entrustment, or for that matter negligent supervision, cannot exist *apart from the excluded negligent operation of the boat.*" 153 Ariz. at 302; 736 P.2d at 386 (emphasis added).

Behrens is controlling here. Any claim of negligent supervision against Nelson Johnson III's parents cannot exist apart from the excluded negligent operation of their car.

C. The Joint Enterprise Liability Claim Arises Out Of Johnson's Use Of His Parents' Car.

"borrowed" parents' car); *Mailhiot v. Nationwide Mutual Fire Ins. Co.*, 1999 Vt. LEXIS 229 (August 27, 1999) (no coverage for claim alleging parents' negligent supervision of minor child while operating a motor vehicle, rejecting concurrent causation analysis); *Bankert v. Threshermen's Mutual Ins. Co.*, 313 N.W.2d 854, 857 (Wis. App. 1981) (no coverage for claim alleging parents negligently supervised son's use of motorcycle).

7 Plaintiff's anticipated reliance on *Scottsdale Ins. Co. v. Van Nguyen*, 158 Ariz. 476, 763 P.2d 540 (App. 1988) is misplaced. *Nguyen* involved a commercial general liability ("CGL") policy that was issued to a moving company. The case did not involve the dovetail relationship between homeowners coverage and automobile coverage. Indeed, the majority in *Nguyen* was most concerned with reaching an equitable result because the insurer in that case issued the CGL policy to a moving company but excluded "that precise activity from its coverage."

The Arizona Supreme Court discussed the elements of joint enterprise liability in *West v. Soto*, 85 Ariz. 255, 336 P.2d 153 (1959.) The Supreme Court said,

When all the occupants of an automobile are engaged in a ‘joint adventure’ or ‘joint enterprise,’ this Court has held that the negligence of one is the negligence of all, but in order to constitute a joint enterprise there must be an equal right, express or implied, among all occupants of the car, to direct and control its operation.

West, 85 Ariz. at 262, 336 P.2d at 157 (quotations omitted).

Thus, any joint enterprise against Mr. Wright must necessarily arise out of the use of his parents’ car, which was the key instrumentality in the alleged joint enterprise. As an integral part of his claim for joint enterprise, Mr. Wright must establish that there was “an equal right, express or implied, among all occupants of the car, to direct and control its operation.” *See id.* Indeed, the amended complaint says that the plan or “joint enterprise” was for Nelson Johnson III and others “to purchase, possess and consume alcoholic beverages as they drove between various locations in the Phoenix area.” SOF, at ¶3i.

D. The Homeowners Policy Excludes Coverage For Any Claims That Nelson Johnson III Provided Alcohol To Minors, Including Himself As He Is A Minor.

The homeowners policy excludes coverage for bodily injury or property damage “arising out the insured’s knowingly permitting or failing to take action to prevent the illegal consumption of alcohol beverages by an underage person.” SOF at ¶11. Mr. Wright alleges that Nelson Johnson III and the other minors purchased and consumed alcoholic beverages. No one with Nelson Johnson III was old enough to legally purchase or consume alcohol. SOF at ¶¶3h & 3i. There is no allegation that Mr. Johnson’s parents provided alcohol to the minors. If there were, the policy excludes coverage for such claims. Indeed, the underlying complaint alleges

that Westside Food and Liquor and its owners, not Mr. and Mrs. Johnson, provided the alcoholic beverages to Mr. Johnson.

E. The Criminal Act Exclusion Bars Coverage Claims Against Mr. Johnson.

The Johnson's homeowners policy excludes bodily injury for "violation of any criminal law for which any insured is convicted." *See Sisters of the Third Order v. Group Health Benefits Trust*, 901 F.2d 1369, 1372 (7th Cir. 1990) (injuries to insured that occurred when he was driving while intoxicated were barred from coverage by health plan's exclusion for "illegal activity"). Mr. Johnson has been convicted of aggravated assault as a result of the car accident. SOF, at ¶10. For this independent reason, the Johnsons' homeowners policy excludes coverage for Mr. Wright's injuries which were allegedly caused by Nelson Johnson III's criminal conduct.

III. CONCLUSION

Creative pleading does not change the fact that Mr. Wright's alleged injuries are causally connected to the use of the Johnsons' car. The automobile exclusion in the Nelsons' American Family homeowners policy excludes coverage for direct and imputed liability for bodily injury that is causally connected to the use of a car. The criminal act exclusion and the illegal consumption of alcohol exclusion also preclude coverage for Nelson Johnson III's criminal operation of his parents' car while intoxicated. American Family is entitled to summary judgment.

ATTACHMENT F

RULING

Rule 32 Petition, filed on March 17, 2016 (Docket # 427)

Statement of the Case

Mr. Danny Wise asks for post-conviction relief following his conviction and sentencing. Mr. Wise filed a timely appeal. His convictions were affirmed on appeal by a Memorandum Decision filed November 3, 2015. Through counsel, Mr. Wise filed a timely petition for post-conviction relief. Mr. Wise's counsel has withdrawn, and Mr. Wise has elected to proceed without counsel. Mr. Wise was granted an evidentiary hearing on one issue, whether he received ineffective assistance of counsel with regard to plea agreements that he alleged the State had extended.

Summary of Decision

Mr. Wise raises no colorable basis for post-conviction relief. Mr. Wise's *Rule 32* Petition, filed on March 17, 2016 (Docket # 427), therefore, is denied.

Issue and Standard of Review/Burden of Proof

1. Did Mr. Wise receive ineffective assistance of trial and *Knapp* counsel where:
 - a. Mr. Wise was never offered plea agreements that would have resulted in a sentence of between one and ten years and Mr. Wise could not credibly establish that he would have accepted a plea agreement or been able to make a factual basis to support a plea agreement?
 - b. Trial and *Knapp* counsel made tactical or strategic decisions:

- i. Not to seek dismissal of the indictment based on allegations that the State violated Mr. Wise's procedural and due process rights?
- ii. Did not conduct a sufficient investigation before trial?
- iii. Did not request a *Willits* instruction?
- iv. Did not seek to preclude the State from introducing the accountancy board settlement agreement?

Findings of Fact

Mr. Wise was charged with thirty counts arising from his work as an accountant. Mr. Wise vigorously asserted his innocence throughout the case, including at sentencing. Mr. Wise also faces federal charges related to his work. A significant amount of evidence is being held in the federal case. Mr. Wise and his counsel, however, have had access to that evidence throughout these proceedings.

In 2008, before the State brought this case, some of Mr. Wise's clients filed complaints with the Arizona State Board of Accountancy. In December, 2008, Mr. Wise consented to the Arizona State Board of Accountancy revoking Mr. Wise's accounting certification.

In 2009, the State brought charges against Mr. Wise. The case was pending for more than four years when it finally went to trial. Mr. Wise had several attorneys during that time. Mr. Wise made it clear that he was dissatisfied with each attorney's performance in one way or another. After a nineteen day trial, the jury convicted Mr. Wise on all thirty counts. He was sentenced to a total of thirty-five years based on those convictions. Mr. Wise does not challenge the sentence as being incorrect or in violation of Arizona law rule or statute.

Mr. Wise expressed his dissatisfaction with many aspects of his case and its handling.

He believed that the State had to produce copies of all evidence that was being held in relation to the federal case. Mr. Wise believed the State was subject to sanctions for not producing that evidence even though the evidence was available to Mr. Wise and his trial and *Knapp* counsel as it was available to the State. Mr. Wise also believed he was probation eligible on all counts even though he was told in open court that he was incorrect on the law. Mr. Wise believed he should and he would get a minimal sentence if he was convicted.

While the case was pending, the State never extended a plea offer to Mr. Wise. Over the years, defense counsel and the State discussed possible plea agreements. Early in the case, *Knapp* counsel approached the State (Ms. Alane Roby, now Alane Ortega) with a proposal. Ms. Ortega never fully considered the proposal because Mr. Wise never said he would accept the proposal if the State offered it. Ms. Ortega further explained that while she would have “staffed” the proposal if Mr. Wise agreed he would take it, she would not have agreed to a one year prison term given the number of victims and the amount of money involved.

Ms. Karen Pugh, who followed Ms. Ortega as the prosecutor in the case, similarly explained that she extended no actual plea offer. Ms. Pugh engaged in some minor plea discussions with defense counsel but to no avail. With regard to the effort at a global settlement, Ms. Pugh was not concerned with whether Mr. Wise could resolve his federal case too. Her focus was on this case, and she did not offer a plea. Ms. Pugh made that point clear on the record before trial.

The trial counsel (Mr. David Dow and Mr. Diego Rodriguez) and *Knapp* counsel (Mr. John Blischak) testified consistent with Ms. Ortega and Ms. Pugh: The State never presented Mr. Wise with a plea that Mr. Wise could reject. All three also testified that they told Mr. Wise he should consider a plea and that if one had been offered based on their discussions, he should

take a plea. Because the State never extended a plea offer, Mr. Wise never had that opportunity.

Mr. Wise said that he would have taken a one year prison plea offer, but he lacked credibility. Defense counsel more credibly testified as to what they told Mr. Wise regarding and plea and his reaction to the idea of taking a plea. Further, during the evidentiary hearing, Mr. Wise was asked to establish the factual basis to support a plea in different ways and with different scenarios. He could not. He insisted that he could not plead to something he did not do. His testimony at the evidentiary hearing was consistent with his statements at sentencing, his trial testimony, and his statements before the trial. Mr. Wise insists he is innocent. In addition, he said that he would not accept a plea that involved more than the one year prison term.

Principles of Law

An Arizona criminal defendant may be entitled to post-conviction relief. *See* Ariz. R. Crim. P. 32.1. Rule 32 relief is addressed to the discretion of the trial court. *State v. Adamson*, 136 Ariz. 250, 265, 665 P.2d 972, 987 (1983). Post-conviction relief is separate and distinct from the right to appeal; it is not designed to give a criminal defendant a second chance for appeal. *State v. Carriger*, 143 Ariz. 142, 145, 692 P.2d 991, 994 (1984). Post-conviction relief “is designed to accommodate the unusual situation where justice ran its course and yet went awry.” *Id.* (citing *State v. McFord*, 132 Ariz. 132, 133, 644 P.2d 286 (App. 1982).

The burden of proving a colorable claim under Rule 32 rests squarely on a petitioner’s shoulders. *Carriger*, 143 Ariz. at 146, 692 P.2d at 995. “To be colorable, a claim has to have the appearance of validity, *i.e.*, if the defendant’s allegations are taken as true, would they change the verdict?” *Adamson*, 136 Ariz. at 265, 665 P.2d at 987. If a defendant presents no grounds for relief, the court must deny a petition for post-conviction relief. Ariz. R. Crim. P. 32.6(c).

Claims for ineffective assistance of counsel are governed by the two-pronged *Strickland*

test. See *State v. Lee*, 142 Ariz. 210, 213-14, 689 P.2d 153, 156-57 (1984) (formally adopting the two-prong test from *Strickland v. Washington*, 466 U.S. 668, 688 (1984)).

- First, a defendant must establish inadequate representation, which means that trial counsel's performance fell well below an objectively reasonable standard dictated by prevailing professional norms based on all of trial counsel's actions in light of the circumstances that existed at the time. *Strickland*, 466 U.S. at 688.
- Second, a defendant must show that trial counsel's actions prejudiced the defense, *i.e.* that there is a reasonable probability that, but for trial counsel's incompetence, the result would have been different. *Id.* at 694.

Failure of one or both of these prongs is fatal to a claim for ineffective assistance of counsel. *Id.* at 700. Strategic or tactical decisions made by trial counsel as to how to defend a case are nearly unassailable in subsequent proceedings. *Id.* at 689.

Analysis

For the reasons discussed below, Mr. Wise's alleged instances of ineffective assistance of counsel do not establish that trial and *Knapp* counsels' performance fell well below an objectively reasonable standard dictated by prevailing professional norms or that trial and *Knapp* counsels' actions prejudiced the defense. Mr. Wise, therefore, fails to carry his burden in establishing a colorable claim for Rule 32 relief.

Plea Discussions

Mr. Wise was given an evidentiary hearing to establish that he received ineffective assistance of trial counsel that resulted in Mr. Wise rejecting plea agreements that would have resulted in a sentence of between one and ten years. Mr. Wise did not meet his burden.

Ultimately, Mr. Wise's testimony was not credible. Trial and *Knapp* counsels' testimony was credible, as was the testimony from the prosecutors, Ms. Ortega and Ms. Pugh.

The evidence established that Mr. Wise was never offered the alleged plea agreements. At best, trial counsel and the state engaged in plea discussions, but the State never extended any formal plea agreements. More specifically, the one year plea that Mr. Wise discussed in his brief was at best a product of his trial counsel making a request of the State. The State credibly said that it would not have agreed to that term.

Mr. Wise further did not and could not establish that he would have taken a plea if one had been offered. At the evidentiary hearing, Mr. Wise could not articulate a factual basis that would support the plea agreements he described. Instead, Mr. Wise continued to protest his innocence at the evidentiary hearing, as he did throughout the case and even at his sentencing.

Remaining Challenges

The balance of Mr. Wise's challenges fall into the category of trial and *Knapp* counsels' strategic and tactical decisions in defending Mr. Wise. *Strickland*, 466 U.S. at 689. These decisions are nearly unassailable and Mr. Wise raises no evidence sufficient to support his challenge. *See id.*

- Contrary to Mr. Wise's claims, trial and *Knapp* counsel reasonably could decide not to seek dismissal of the indictment based on allegations that the State violated Mr. Wise's procedural and due process rights based on the weakness of the claim.
- Contrary to Mr. Wise's claims, trial and *Knapp* counsel were prepared, understood the case, and knew the evidence. The court observed trial and *Knapp* counsel and concludes that trial and *Knapp* counsel conducted a sufficient

investigation during the case and before trial to represent Mr. Wise. Mr. Wise's belief that trial and *Knapp* counsel could have done more does not establish that trial and *Knapp* counsel did not do enough. Throughout the case, Mr. Wise insisted that everyone should do more.

- Contrary to Mr. Wise's claims, trial and *Knapp* counsel reasonably could decide not to seek a *Willits* instruction under the facts of this case. One obvious reason is that the evidence did not support a *Willits* instruction. The claim relates to documents and other items that Mr. Wise proclaims would have established his innocence but were not produced. Those documents and items, however, were made available to Mr. Wise and his trial and *Knapp* counsel throughout. Mr. Wise's defense was not hampered or in any way prejudiced. Mr. Wise was not entitled to a *Willits* instruction had it been requested. Such a request would have been denied.
- Contrary to Mr. Wise's claims, trial and *Knapp* counsel reasonably could decide not to seek to preclude the State from introducing the accountancy board settlement agreement for numerous reasons. One obvious reason was that trial and *Knapp* counsel argued that Mr. Wise had taken responsibility for not properly managing his accountancy business by surrendering his license but that Mr. Wise did not take the victims' money.

Based on the above, Mr. Wise establishes insufficient evidence to support a colorable claim that he received ineffective assistance of counsel justifying post-conviction relief under Rule 32 on any of the points that he raised, including the alleged plea agreements.

Conclusions of Law

Mr. Wise received effective assistance of trial and *Knapp* counsel. Mr. Wise was never offered plea agreements that would have resulted in a sentence of between one and ten years. Mr. Wise also could not credibly establish that he would have accepted a plea agreement or been able to make a factual basis to support a plea agreement. Trial and *Knapp* counsel further made appropriate tactical or strategic decisions:

1. By not seeking dismissal of the indictment based on allegations that the State violated Mr. Wise's procedural and due process rights;
2. By conducting a sufficient investigation before trial;
3. By not requesting a *Willits* instruction; and
4. By not seeking to preclude the State from introducing the accountancy board settlement agreement.

Order/Ruling

IT IS THEREFORE ORDERED denying Mr. Wise's *Rule 32* Petition, filed on March 17, 2016 (Docket # 427).

ATTACHMENT G

RULING

This case arises out of plaintiff's challenge to the official canvass of Arizona's 2016 Presidential Preference Election (PPE) held on March 22, 2016. Plaintiff timely filed the challenge to the official canvass of the PPE. Arizona law requires that plaintiff file the action within five days of the official canvass of the election. *See* A.R.S. § 16-673.A. The filing deadline is jurisdictional and requires strict compliance. *See Bd. of Sup'rs of Maricopa County v. Superior Court, Maricopa County*, 103 Ariz. 502, 504, 446 P.2d 231, 233 (1968). The deadline to file was April 8, 2016. Plaintiff met that deadline.

Motion to Dismiss

The PPE Is Subject To Challenge Under A.R.S. § 16-672.A.

Whether the PPE is subject to an election contest under A.R.S. § 16-672 is an issue of first impression. The specific issue is whether the PPE is an election that constitutes a "question or proposal submitted to a vote of the people" and for which a result has been declared. Plaintiff argues that it is. Defendants argue that it is not.

Election challenges are statutory. *See Harles v. Lockwood*, 85 Ariz. 97, 332 P.2d 887 (1958); *Katan v. City of Prescott*, 223 Ariz. 179, 181-82 ¶ 8, 221 P.3d 370, 372-73 (App. 2009); *Barrera v. Superior Court*, 117 Ariz. 528, 573 P.2d 928, 573 P.2d 928 (App. 1977). The court therefore must strictly construe the statutory requirements. *Donaghey v. Attorney General*, 120 Ariz. 93, 95, 584 P.2d 557, 559 (1978). Longstanding precedent establishes that the person bringing an election challenge bears the burden of proving the statute applies to the challenged

election. *See Henderson v. Carter*, 34 Ariz. 528, 534, 273 P. 10, 12 (1928).

This Court, however, must interpret statutes, including election statutes, in accord with the drafters' intent, with the plain language being the best indicator of that intent. *See Zamora v. Reinstein*, 185 Ariz. 272, 275, 915 P.2d 1227, 1230 (1996); *In re Estate of Winn*, 225 Ariz. 275, 277, ¶ 9, 237 P.3d 628, 630 (App. 2010). If the statute is clear and unambiguous, this Court need not employ other methods of statutory construction. *State ex rel. Romley v. Hauser*, 209 Ariz. 539, ¶ 10, 105 P.3d 1158, 1160 (2005); *State v. Riggs*, 189 Ariz. 327, 333, 942 P.2d 1159, 1165 (1997).

The Court presumes "the legislature expressed itself in as clear a manner as possible and that it accorded words their natural and obvious meanings unless stating otherwise." *See State v. Johnson*, 171 Ariz. 39, 42, 827 P.2d 1134, 1137 (App. 1992) (internal citations omitted); *State v. Reynolds*, 170 Ariz. 233, 234, 823 P.2d 681, 682 (1992); *Deatherage v. Deatherage*, 140 Ariz. 317, 320, 681 P.2d 469, 472 (App. 1984). "Whenever possible, a statute will be given such an effect that no clause, sentence, or word is rendered superfluous, void, contradictory or insignificant." *See Johnson*, 171 Ariz. at 42, 827 P.2d at 1137 (quoting *State v. Arthur*, 125 Ariz. 153, 155, 608 P.2d 90, 92 (App. 1980)). In that regard, the statute must be read as a whole. *See id.*

If the Court finds that the statute is ambiguous and the intent is unclear, the Court must consider the context of the statute, "its language, subject matter, and historical background; its effects and consequences; and its spirit and purpose." *See Courtney v. Foster ex rel. Maricopa*, 235 Ariz. 613, 615, 334 P.3d 1272, 1274 (App. 2014) (quoting *Hayes v. Continental Ins. Co.*, 178 Ariz. 264, 268, 872 P.2d 668, 672 (1994)) (internal quotations omitted).

Plaintiff relies on the plain language of the statute. Plaintiff takes that position that the

PPE involved a statewide question that was submitted to a vote of the people and for which a result was declared.

Defendants point out that A.R.S. § 16-672.C and A.R.S. § 16-675.A both use narrower language, referring to a “question or proposal, which has been declared carried . . .” However, those subsections address when the Attorney General (A.R.S. § 16-672.C and A.R.S. § 16-675.A) and the Governor (A.R.S. § 16-675.A) must be served and may intervene in an election challenge. That very language was the subject of the Attorney General’s motion to quash. The statute authorizing the challenge, section 16-672.A, uses broader language, allowing a challenge to a question or proposal submitted to a vote of the people for which a result has been declared. Subsection A does not require that the question or proposal “be declared carried.” Other statutes to which defendants pointed similarly involved unique language that made them simply inapplicable. Further, to the extent A.R.S. § 16-672.C and A.R.S. § 16-675.A use narrow language, A.R.S. § 16-673 uses very broad language, talking about “contesting a state election.” See A.R.S. § 16-673.A. In other words, the Court can find examples of broader and narrower language in the relevant article, but the controlling language is in A.R.S. § 16-675.A.

Defendants’ reliance on *McCall v. City of Tombstone*, 21 Ariz. 161, 164, 185 P. 942, 943 (1919) is misplaced. The language in *McCall* is very specific. *McCall* simply says that based on other statutes in place at the time, for an “other question” to be challenged, it must involve (1) the same electorate and (2) the same canvassing board as a state office or a constitutional amendment. See *id.* The “‘other question’ refers to a state-wide proposition requiring the same electorate and the same canvassing board as a state office or a constitutional amendment before it would be subject to a contest thereunder.” See *id.* The Court cannot read *McCall* as broadly as defendants ask. See *id.* *McCall* does not say that to constitute an “other question” under the

statute, the election must be an election to state office or a constitutional amendment. *See id.* The issue in *McCall* was whether the state election challenge statute could apply to a county election. *McCall* said no, it had to involve a statewide election.

Here, the PPE is statewide, it involves the same statewide electorate, and it involves the same statewide canvassing board as an election to state office or an amendment to the state constitution. And A.R.S. § 16-672 bears the caption “state elections” just as the statute at issue in *McCall*. *See id.*

THE COURT THEREFORE FINDS that based on the above, the PPE is an election that is subject to challenge under A.R.S. § 16-672.A.

IT IS THEREFORE ORDERED denying the motions to dismiss on the grounds that the PPE is not subject to challenge under A.R.S. § 16-672.A.

Merits

At the close of plaintiff’s case, the Court granted oral motions for judgment as a matter of law on the merits in favor of the Secretary of State, the Pima County defendants, and the Santa Cruz defendants.

At the close of the Maricopa County defendants’ case, the Court granted judgment as a matter of law on the merits in favor of the Maricopa County defendants.

On the Court’s own motion, the Court grants judgment as a matter of law in favor of all remaining defendants.

Plaintiff bears the burden of proof.

Plaintiff alleges that the results from the official canvass were either the product of fraud, the product of improper procedures, or the product of illegal votes. Plaintiff bears the burden of proof. *See Moore v. City of Page*, 148 Ariz. 151, 159, 713 P.2d 813, 821 (App. 1986). The Court

must draw all reasonable presumptions in favor of the validity of an election. *See id.* Plaintiff must prove fraud or that if proper procedures had been used, the result would have been different. *See id.*

In an election challenge, the challenger must prove fraud by clear and convincing evidence. *See Buzard v. Griffin*, 89 Ariz. 42, 50 (1960). Plaintiff cannot rely on speculation or conjecture. *See id.* Long standing precedent establishes that the Court must not infer fraud in an election from slight irregularities, unconnected with incriminating circumstances. *See Hunt v. Campbell*, 19 Ariz. 254, 264 (1917). Mere suspicion is insufficient. *See id.* The Court will not “destroy the credit of the official returns [absent] positive and unequivocal evidence of the fraud, and if the circumstances of a case can be explained upon the hypothesis of good faith, that explanation will prevail.” *Id.* at 276.

With regard to allegations of illegal votes, plaintiff bears some additional burdens. First, to establish an illegal vote, the challenger must prove that the vote was cast by a person who was not eligible to vote in the election. *See Babnew v. Linneman*, 154 Ariz. 90, 94, 740 P.2d 511, 515 (App. 1987). Second, “[w]here an election is contested on the grounds of illegal voting, the contestant has the burden of showing that sufficient illegal votes were cast to change the result, and of showing for whom or for what they were cast.” *See Clay v. Town of Gilbert*, 160 Ariz. 335, 338, 773 P.2d 233, 236 (App. 1989) (quoting *Moore v. City of Page*, 148 Ariz. 151, 156, 713 P.2d 813, 818 (App. 1986). *See also Morgan v. Board of Supervisors*, 67 Ariz. 133, 143, 192 P.2d 236, 243 (1948); *Millet v. Board of Supervisors*, 6 Ariz. App. 16, 19, 429 P.2d 508, 511 (1967). If the challenger cannot show for whom the illegal votes were cast, the Arizona Supreme Court has established the challenger’s burden as follows:

[Illegal votes] are to be deducted from the whole vote of the

election division, and not from the candidate having the largest number. Of course, in the application of this rule such illegal votes would be deducted proportionately from both candidates, according to the entire vote returned for each.

Grounds v. Lawe, 67 Ariz. 176, 183–85, 193 P.2d 447, 451–53 (1948). *See also Clay v. Town of Gilbert*, 160 Ariz. 335, 338-39, 773 P.2d 233, 236-37 (App. 1989).

Plaintiff did not establish that illegal votes were cast, for whom such alleged illegal votes were cast, or that if the alleged illegal votes were deducted proportionally among the candidates, it would have changed the outcome.

With regard to the allegations of illegal votes, the only potential evidence presented was that in Maricopa County, some voters were permitted to vote a regular or provisional ballot from a congressional district different from the voter's home congressional district. The poll worker had 26 ballots that she gave out in this manner. MCED acknowledged that voters did vote ballots from congressional districts other than their home congressional district because of ballot shortages at some polling places. Earlier in the day, MCED was able to get additional ballots to at least one polling place that had this problem. Later in the day, MCED did not have sufficient staff to distribute more ballots.

The ballots cast in this manner are not illegal votes, though those ballots would have impacted the tabulation by congressional districts. Voters in that situation and who received a regular ballot would have been eligible to vote in the PPE. Voters in that situation and who received a provisional ballot would have their ballots counted only if they were eligible to vote in the PPE. Under either scenario, the votes counted would have been cast by voters eligible to vote in the PPE. Except for the congressional district designation, the PPE ballots were the same depending on the party affiliation.

The voter's use of a ballot with a congressional district designation that did not match the

voter's home congressional district did not result in any vote being cast by a person who was not eligible to vote in the PPE. It did result in some votes being tabulated as having been cast in a different congressional district, but that does not make the vote itself illegal because the person was eligible to vote. *See Babnew*, 154 Ariz. at 94, 740 P.2d at 515 (illegal vote is one cast by a person who is not eligible to vote in the election). Moreover, at that point on election day, the two other options would have been to have all people who needed an alternative ballot use the Edge machine, which generally is reserved for persons needing additional assistance to vote independently, or to deny those voters any opportunity to vote at all, which would have been a greater harm under the circumstances.

As a final matter on the issue of illegal votes, plaintiff offered no evidence establishing for whom the alleged illegal votes were cast. *See Babnew*, 154 Ariz. at 94, 740 P.2d at 515. Plaintiff offered no evidence that the illegal votes, if eliminated would have changed the outcome of the election. *See Clay*, 160 Ariz. at 338, 773 P.2d at 236. Plaintiff further did not offer evidence to establish that "if illegal votes would be deducted proportionately from both candidates, according to the entire vote returned for each" the outcome would have been different. *See Grounds*, 67 Ariz. at 183-85, 193 P.2d at 451-53. As such, even if the votes cast using a ballot from the incorrect congressional district were illegal votes, plaintiff did not meet his burden of showing it would have changed the outcome. *See id.*

ATTACHMENT H

ANTENUPTIAL AGREEMENT

The parties entered into an Antenuptial Agreement in Arizona on December 12, 1997 (“The Antenuptial Agreement”). Father’s attorney, Michael Miller, drafted the Antenuptial Agreement. Mother did not retain counsel. The Antenuptial Agreement was filed with the Recorder’s Office in Maricopa County that same day. The Antenuptial Agreement provides that Arizona state law shall control its interpretation and construction. The Antenuptial Agreement came into full effect when the parties married on December 31, 1997. *See* A.R.S. § 25-202(B).

Because the parties disagree about the validity of the Antenuptial Agreement, the Court must determine if the Antenuptial Agreement is valid under Arizona law.

Arizona Law

Premarital agreements in Arizona are governed by statute. *See* A.R.S. §§ 25-201 to - 205). Parties may enter into Premarital Agreements to protect the rights and interests of either or both parties. *See* A.R.S. § 25-203(A)(1). The Court may deem a Premarital Agreement unenforceable if the person against whom enforcement is sought proves either of the following:

1. The person did not execute the agreement voluntarily.
2. The agreement was unconscionable when it was executed and before execution of the agreement that person:
 - a. Was not provided a fair and reasonable disclosure of the property or financial obligations of the other party.
 - b. Did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial

obligations of the other party beyond the disclosure provided.

- c. Did not have, or reasonably could not have had, an adequate knowledge of the party or financial obligations of the other party.

See A.R.S. § 25-202(C). Petitioner argues that all three parts of A.R.S. § 25-202(C)(2) must be present, citing authority from Iowa and Oregon. In Arizona, the Court need only find one item under A.R.S. § 25-202(C)(2) present to find an Antenuptial Agreement invalid. See *In re Marriage of Pownall*, 197 Ariz. 577, 579, 5 P.3d 911, 913 (2000).

Additionally, a premarital agreement may be struck if the Court finds it to be unconscionable, which the Court decides as a matter of law. See A.R.S. § 25-202(D). In determining unconscionability in a premarital agreement, the Court looks to the standards applied in commercial and contract law. See *Pownall*, 197 Ariz. at 580; 5 P.3d at 914. *Pownall* listed factors for the Court to consider in a procedural unconscionability challenge. See *id.* (quoting *Maxwell v. Fidelity Fin. Serv's, Inc.*, 184 Ariz. 82, 89, 907 P.2d 51, 58 (1995)).

Pownall said:

[T]hose factors bearing upon . . . the real and voluntary meeting of the minds of the contracting party [include]: age, education, intelligence, business acumen and experience, relative bargaining power, who drafted the contract, whether the terms were explained to the weaker party, [and] whether alterations in the printed term were possible . . .

See *id.*

Procedural Unconscionability

THE COURT FINDS as follows with regard to the *Pownall* factors:

- **Independent Legal Counsel.** Father had independent counsel. Mother did not. Mother, however, initialed on the Antenuptial Agreement that she waived counsel. See

Antenuptial Agreement, page 1, section 2. Father, however, required Mother to pay half the cost of Father's attorney, blurring the clear line that should have been drawn that Mr. Miller represented Father, not Mother. That Father required Mother to pay half of Mr. Miller's fee troubles the Court. Father did not offer to pay for Mother to secure independent counsel. Further, Mother's ability to afford independent counsel was hampered by Father's request that she pay half of Mr. Miller's fee. Moreover, Father's ability to overreach in the relationship is manifest by the fact that he was able to get Mother to pay an attorney to represent Father against Mother.

- **Age.** Mother was just 15 when she and Father met. Father was 25. Mother was in high school. Father was completing medical school. Mother moved in with Father when she was just 17 and still in high school; Father was 27 and completing his residency in family medicine. Mother signed the Antenuptial Agreement just five years later, when she was 22 and Father was 32.
- **Education and Intelligence.** Father was a licensed, practicing physician; Mother had taken a few post-secondary classes. Father had moved Mother around the country several times as he sought to improve his career as a doctor. Father had maintained control over the couple's premarital finances, saying he did not trust Mother to manage them.
- **Business Acumen and Experience.** Father had created a business through which he could funnel his earnings as a doctor and create some tax and liability shelters. Even at that, Father testified that he did not understand the agreement that his own attorney had drafted. Mother had no such experience, and she also said that she did not understand the entire agreement.

- **Relative Bargaining Power.** Father was in charge to the point that he convinced Mother to pay half of the fees that Father incurred for his attorney to draft the Antenuptial agreement for him. Father had decided when and where the parties would live. Father had moved Mother all around the United States prior to the marriage. Mother was not able to establish herself in a career before Father required that they move again. Father was in control of the finances. As a result, Mother had no sense of security beyond Father.
- **Drafter of the Contract.** Father's attorney, Michael Miller, drafted the Antenuptial Agreement. Mother did not assist in the drafting.
- **Explanation of Terms to the Weaker Party.** The parties agree that some explanation was provided. Mother claims that she did not understand all the terms. For example, Mother did not know what the word "waive" meant at the time, though she does now.
- **Possibility of Alterations.** Mother was not unequivocally told she could make changes. Whether Father understood is not the issue because his attorney drafted the Antenuptial Agreement. Mother, however, acknowledges that she wanted two of the provisions that were in the Antenuptial Agreement: (1) The provision related to protecting Mother's inheritance and (2) the provision that ensured that Mother would not be liable for Father's student loan debt.
- **Additional Concern Relating to Illusory Consideration:** An additional concern for the Court is the presence of illusory consideration. Consideration is not required for a premarital agreement to be enforceable; a premarital agreement can be substantively unconscionable. See A.R.S. § 25-202(A). The Court is troubled not by the lack of

consideration, but by the use of illusory consideration. Father claims that his purpose was to indemnify himself from any possibility of spousal support, which is perfectly appropriate. It is another story to secure Mother's approval by offering up illusory consideration. Generally, the items in the Antenuptial Agreement that purport to protect Mother provided no real protection at all.

- **Mother's Inheritance:** The Antenuptial Agreement purports to preserve any inheritance Mother might receive, but her inheritance would be protected regardless. Father says the Antenuptial Agreement would have protected Mother's inheritance even if she had mixed her inheritance with community assets, but that conclusion is not clearly stated in the Antenuptial Agreement. Moreover, it is not clear how community assets would have been created given the provisions of the Antenuptial Agreement. In reality, Father would not have received any of Mother's inheritance, and if she had mixed her inheritance with community funds, the Antenuptial Agreement does not on its face protect the inheritance. Moreover, given that any property purchased with sole and separate funds, such as Mother's inheritance, would remain that party's sole and separate property, the Court is hard pressed to see how community property could be created under the Antenuptial Agreement.
- **Father's Student Loans:** The Antenuptial Agreement purports to protect Mother from liability for Father's student loan debt. Mother, however, would not have been responsible for Father's student loans that Father incurred before the marriage. Without the Antenuptial Agreement, Mother might have been held responsible for student loan incurred after the marriage, though none was

incurred. At best, this small concession shows some degree of non-illusory consideration on behalf of Father.

In short, Father's inclusion of the provisions related to Mother's inheritance and Father's student loans provided the illusion of considerable consideration, when in fact very little was given. The illusory nature of the consideration is more troublesome when coupled with the fact that Mother had no independent counsel to tell her that the consideration was at best, insubstantial.

The Court has concerns about the procedural unconscionability of the parties' Antenuptial Agreement, but under the standard set by *Pownall*, the Court cannot conclude that the issues, though concerning, push the Antenuptial Agreement across the line. Mother said that she understood she was signing a premarital agreement and that it included some of the terms that she wanted and some of the terms that Father wanted. The Antenuptial Agreement may have extreme terms, making enforcement compelling for substantive reasons, but extreme terms are allowed so that the wealthier party can protect his or her assets. In other words, substantive unconscionability cannot be used to void a premarital agreement.

THE COURT THEREFORE FINDS that the Antenuptial Agreement is valid and enforceable.

Attorney Fee and Cost Shifting Provision

The attorney fee shifting provision in the Antenuptial Agreement does not survive procedural unconscionability, all of the above factors weigh against enforceability.

Moreover, the legislature addressed the award of attorney fees and costs in dissolution actions in A.R.S. § 25-324. The Court has the discretion to award attorney fees in a dissolution based on the reasonableness of positions and based on the wealth of the parties. Indeed, the

award of attorney fees in dissolution cases can be a matter of support and enforceable by contempt proceedings and failure to pay can be punishable by incarceration. In short, in dissolution actions, the wealthier party cannot use his or her wealth to gain an unfair advantage over the poorer spouse.

THE COURT FINDS that here, Father seeks to do just that. He has his attorney prepare a draconian premarital agreement and includes a provision that makes Mother liable for attorney fees and costs if she challenges the agreement and loses, even if she has a good faith basis for the challenge.

THE COURT FURTHER FINDS that Father's attorney drafted the Antenuptial Agreement and put the fee and cost shifting provision in it. Father offered no evidence that Mother was made aware that the fee shifting provision was in the Antenuptial Agreement or that Mother understood that once she signed the Antenuptial Agreement, she could not raise a good faith challenge to it without being exposed to an award of attorney fees and costs.

THE COURT THEREFORE FINDS that the attorney fee and cost shifting provision in the Antenuptial Agreement is unconscionable and therefore unenforceable.

IT IS THEREFORE ORDERED declining to award Father attorney fees and costs under the Antenuptial Agreement.

Impact of Enforcing the Antenuptial Agreement

The parties agree if the Antenuptial Agreement is enforceable, it resolves the following:

- Neither Mother nor Father is entitled to spousal maintenance.
- Each party's earnings are his or her sole and separate property.

- Each party shall keep the property purchased with his or her earnings.
- Each party is responsible for his or her sole and separate debts, including Father's student loans.

In addition, Father states that at this point, he does not seek any personal property in Mother's possession. Mother also seeks no personal property in Father's possession.

IT THEREFORE IS ORDERED that with the above, the property and spousal maintenance issues are resolved.

ATTACHMENT I

Maricopa County Voters Only

Hon. David B. Gass

Maricopa County Superior Court

Bench: Civil

Appointed: 2009

100% of the Commission Voted Judge Gass

MEETS Judicial Performance Standards

32 Commissioners Voted 'Meets'

0 Commissioners Voted 'Does Not Meet'

2016	Attorney Surveys	Juror Surveys	Litigant Witness Surveys
	Distributed: 171	Distributed: 9	Distributed: 44
	Returned: 44	Returned: 4	Returned: 7
	Detailed Report	Detailed Report	Detailed Report
	Score (See Footnote)	Score (See Footnote)	Score (See Footnote)
Legal Ability	99%	n/a	n/a
Integrity	100%	100%	100%
Communication	99%	100%	100%
Temperament	99%	100%	100%
Admin Performance	100%	100%	100%
Settlement Activities	100%	n/a	n/a

FOOTNOTE: The score is the percentage of all evaluators who rated the judge "satisfactory", "very good", or "superior" in each of the Commission's evaluation categories. Depending on the assignment, a judge may not have responses in certain categories, indicated by N/A (for example, some judicial assignments do not require jury trials). The JPR Commission votes "Yes" or "No" on whether a judge "MEETS" Judicial Performance Standards, based on the statistical information, as well as any other information submitted by the public or the judge. Further information on the judges and justices can be found at each court's website.

Hon. David B. Gass

2016 Attorney Survey Responses

Key: **UN** = Unsatisfactory **PO** = Poor **SA** = Satisfactory **VG** = Very Good **SU** = Superior

	UN		PO		SA		VG		SU		Mean	Total	No Resp
	Num.	Pct.	Num.	Pct.	Num.	Pct.	Num.	Pct.	Num.	Pct.			
1. Legal Ability													
1. Legal reasoning ability	0	0%	1	3%	2	5%	9	24%	26	68%	3.58	38	0
2. Knowledge of substantive law	0	0%	1	3%	2	6%	8	23%	24	69%	3.57	35	0
3. Knowledge of rules of evidence	0	0%	0	0%	3	12%	8	31%	15	58%	3.46	26	0
4. Knowledge of rules of procedure	0	0%	0	0%	3	8%	10	26%	26	67%	3.59	39	0
Category Total	0	0%	2	1%	10	7%	35	25%	91	66%	3.56	138	
2. Integrity													
5. Basic fairness and impartiality	0	0%	0	0%	4	10%	7	17%	30	73%	3.63	41	0
6. Equal treatment regardless of race	0	0%	0	0%	1	4%	2	8%	22	88%	3.84	25	0
7. Equal treatment regardless of gender	0	0%	0	0%	1	4%	4	14%	23	82%	3.79	28	0
8. Equal treatment regardless of religion	0	0%	0	0%	0	0%	1	5%	21	95%	3.95	22	0
9. Equal treatment regardless of national origin	0	0%	0	0%	0	0%	2	9%	20	91%	3.91	22	0
10. Equal treatment regardless of disability	0	0%	0	0%	0	0%	1	4%	23	96%	3.96	24	0
11. Equal treatment regardless of age	0	0%	0	0%	0	0%	2	8%	23	92%	3.92	25	0
12. Equal treatment regardless of sexual orientation	0	0%	0	0%	0	0%	1	5%	20	95%	3.95	21	0
13. Equal treatment regardless of economic status	0	0%	0	0%	1	4%	3	11%	23	85%	3.81	27	0
Category Total	0	0%	0	0%	7	3%	23	10%	205	87%	3.84	235	
3. Communication													
14. Clear and logical oral communications and directions	0	0%	0	0%	3	7%	13	30%	27	63%	3.56	43	0
15. Clear and logical written decisions	0	0%	0	0%	3	9%	10	29%	21	62%	3.53	34	0

16. Gave all parties an adequate opportunity to be heard	0	0%	1	2%	1	2%	11	27%	28	68%	3.61	41	0
Category Total	0	0%	1	1%	7	6%	34	29%	76	64%	3.57	118	
4. Temperament													
17. Understanding and compassion	0	0%	0	0%	2	5%	10	24%	30	71%	3.67	42	0
18. Dignified	0	0%	1	2%	2	5%	10	23%	30	70%	3.60	43	0
19. Courteous	1	2%	0	0%	1	2%	4	9%	37	86%	3.77	43	0
20. Conduct that promoted public confidence in the court and judge"s ability	0	0%	0	0%	2	5%	7	16%	34	79%	3.74	43	0
21. Patient	1	2%	0	0%	1	2%	7	16%	34	79%	3.70	43	0
Category Total	2	1%	1	0%	8	4%	38	18%	165	77%	3.70	214	
5. Admin Performance													
22. Punctual in conducting proceedings	0	0%	0	0%	3	7%	12	28%	28	65%	3.58	43	0
23. Maintained proper control over courtroom	0	0%	0	0%	3	9%	6	18%	25	74%	3.65	34	0
24. Prompt in making rulings and rendering decisions	0	0%	0	0%	1	3%	10	26%	27	71%	3.68	38	0
25. Was prepared for the proceedings	0	0%	0	0%	4	10%	9	21%	29	69%	3.60	42	0
26. Efficient management of the calendar	0	0%	0	0%	2	6%	8	22%	26	72%	3.67	36	0
Category Total	0	0%	0	0%	13	7%	45	23%	135	70%	3.63	193	
6. Settlement Activities													
27. Appropriately promoted or conducted settlement	0	0%	0	0%	1	8%	2	17%	9	75%	3.67	12	0
Category Total	0	0%	0	0%	1	8%	2	17%	9	75%	3.67	12	

Hon. David B. Gass

2016 Juror Survey Responses

Key: **UN** = Unsatisfactory **PO** = Poor **SA** = Satisfactory **VG** = Very Good **SU** = Superior

	UN		PO		SA		VG		SU		Mean	Total	No Resp
	Num.	Pct.	Num.	Pct.	Num.	Pct.	Num.	Pct.	Num.	Pct.			
1. Integrity													
1. Basic fairness and impartiality	0	0%	0	0%	0	0%	2	50%	2	50%	3.50	4	0
2. Equal treatment regardless of race	0	0%	0	0%	0	0%	1	25%	3	75%	3.75	4	0
3. Equal treatment regardless of gender	0	0%	0	0%	0	0%	1	25%	3	75%	3.75	4	0
4. Equal treatment regardless of religion	0	0%	0	0%	0	0%	1	33%	2	67%	3.67	3	0
5. Equal treatment regardless of national origin	0	0%	0	0%	0	0%	2	50%	2	50%	3.50	4	0
6. Equal treatment regardless of disability	0	0%	0	0%	0	0%	2	50%	2	50%	3.50	4	0
7. Equal treatment regardless of age	0	0%	0	0%	0	0%	2	50%	2	50%	3.50	4	0
8. Equal treatment regardless of sexual orientation	0	0%	0	0%	0	0%	1	33%	2	67%	3.67	3	0
9. Equal treatment regardless of economic status	0	0%	0	0%	0	0%	1	25%	3	75%	3.75	4	0
Category Total	0	0%	0	0%	0	0%	13	38%	21	62%	3.62	34	
2. Communication													
10. Explained proceedings to the jury	0	0%	0	0%	0	0%	0	0%	4	100%	4.00	4	0
11. Explained reasons for delays	0	0%	0	0%	0	0%	0	0%	3	100%	4.00	3	0
12. Clearly explained the juror's responsibilities	0	0%	0	0%	0	0%	0	0%	4	100%	4.00	4	0
Category Total	0	0%	0	0%	0	0%	0	0%	11	100%	4.00	11	
3. Temperament													
13. Understanding and Compassion	0	0%	0	0%	0	0%	1	25%	3	75%	3.75	4	0
14. Dignified	0	0%	0	0%	0	0%	1	25%	3	75%	3.75	4	0
15. Courteous	0	0%	0	0%	0	0%	1	25%	3	75%	3.75	4	0
16. Conduct that promotes public confidence in the court and judge's	0	0%	0	0%	0	0%	1	25%	3	75%	3.75	4	0

ability													
17. Patient	0	0%	0	0%	0	0%	1	25%	3	75%	3.75	4	0
Category Total	0	0%	0	0%	0	0%	5	25%	15	75%	3.75	20	
4. Admin Performance													
18. Punctuality in conducting proceedings	0	0%	0	0%	0	0%	1	25%	3	75%	3.75	4	0
19. Maintained proper control of courtroom	0	0%	0	0%	0	0%	0	0%	4	100%	4.00	4	0
20. Was prepared for the proceedings	0	0%	0	0%	0	0%	0	0%	4	100%	4.00	4	0
Category Total	0	0%	0	0%	0	0%	1	8%	11	92%	3.92	12	

Hon. David B. Gass

2016 Litigant Witness Survey Responses

Key: **UN** = Unsatisfactory **PO** = Poor **SA** = Satisfactory **VG** = Very Good **SU** = Superior

	UN		PO		SA		VG		SU		Mean	Total	No Resp
	Num.	Pct.	Num.	Pct.	Num.	Pct.	Num.	Pct.	Num.	Pct.			
1. Integrity													
1. Basic fairness and impartiality	0	0%	0	0%	2	29%	2	29%	3	43%	3.14	7	0
2. Equal treatment regardless of race	0	0%	0	0%	2	40%	0	0%	3	60%	3.20	5	0
3. Equal treatment regardless of gender	0	0%	0	0%	2	40%	0	0%	3	60%	3.20	5	0
4. Equal treatment regardless of religion	0	0%	0	0%	2	50%	0	0%	2	50%	3.00	4	0
5. Equal treatment regardless of national origin	0	0%	0	0%	2	50%	0	0%	2	50%	3.00	4	0
6. Equal treatment regardless of disability	0	0%	0	0%	2	40%	0	0%	3	60%	3.20	5	0
7. Equal treatment regardless of age	0	0%	0	0%	2	40%	0	0%	3	60%	3.20	5	0
8. Equal treatment regardless of sexual orientation	0	0%	0	0%	2	50%	0	0%	2	50%	3.00	4	0
9. Equal treatment regardless of economic status	0	0%	0	0%	2	50%	0	0%	2	50%	3.00	4	0
Category Total	0	0%	0	0%	18	42%	2	5%	23	53%	3.12	43	
2. Communication													
10. Explained proceedings	0	0%	0	0%	1	14%	2	29%	4	57%	3.43	7	0
11. Explained reasons for delays	0	0%	0	0%	1	20%	2	40%	2	40%	3.20	5	0
Category Total	0	0%	0	0%	2	17%	4	33%	6	50%	3.33	12	
3. Temperament													
12. Understanding and compassion	0	0%	0	0%	2	29%	1	14%	4	57%	3.29	7	0
13. Dignified	0	0%	0	0%	2	29%	0	0%	5	71%	3.43	7	0
14. Courteous	0	0%	0	0%	2	29%	0	0%	5	71%	3.43	7	0
15. Conduct that promotes public confidence in the court	0	0%	0	0%	2	29%	1	14%	4	57%	3.29	7	0

16. Patient	0	0%	0	0%	2	29%	0	0%	5	71%	3.43	7	0
Category Total	0	0%	0	0%	10	29%	2	6%	23	66%	3.37	35	
4. Admin Performance													
17. Punctual in conducting proceedings	0	0%	0	0%	2	29%	1	14%	4	57%	3.29	7	0
18. Maintained proper control of courtroom	0	0%	0	0%	2	29%	1	14%	4	57%	3.29	7	0
19. Was prepared for the proceedings	0	0%	0	0%	2	33%	0	0%	4	67%	3.33	6	0
Category Total	0	0%	0	0%	6	30%	2	10%	12	60%	3.30	20	

ATTACHMENT J

Maricopa County Voters Only

Hon. David B. Gass

Maricopa County Superior Court

Bench: Family

Appointed: 2009

**100% of the Commission Voted Judge Gass
MEETS Judicial Performance Standards**

30 Commissioners Voted 'Meets'

0 Commissioners Voted 'Does Not Meet'

2012	Attorney Surveys	Litigant Witness Surveys
	Distributed: 120	Distributed: 331
	Returned: 37	Returned: 33
	Detailed Report	Detailed Report
	Score (See Footnote)	Score (See Footnote)
Legal Ability	96%	n/a
Integrity	98%	85%
Communication Skills	95%	75%
Temperament	97%	76%
Admin Performance	95%	85%
Settlement Activities	100%	n/a

FOOTNOTE: The score is the percentage of all evaluators who rated the judge "satisfactory", "very good", or "superior" in each of the Commission's evaluation categories. Depending on the assignment, a judge may not have responses in certain categories, indicated by N/A (for example, some judicial assignments do not require jury trials). The JPR Commission votes "Yes" or "No" on whether a judge "MEETS" Judicial Performance Standards, based on the statistical information, as well as any other information submitted by the public or the judge. Further information on the judges and justices can be found at each court's website.

Hon. David B. Ga

2012 Attorney Survey Responses

Key: **UN** = Unsatisfactory **PO** = Poor **SA** = Satisfactory **VG** = Very Good **SU** = Superior

	UN		PO		SA		VG		SU		Mean	Total	No Resp
	Num.	Pct.	Num.	Pct.	Num.	Pct.	Num.	Pct.	Num.	Pct.			
1. Legal Ability													
1. Legal reasoning ability	0	0%	2	5%	1	3%	14	38%	20	54%	3.41	37	0
2. Knowledge of substantive law	0	0%	2	5%	1	3%	14	38%	20	54%	3.41	37	0
3. Knowledge of rules of evidence	0	0%	1	3%	2	6%	13	36%	20	56%	3.44	36	1
4. Knowledge of rules of procedure	0	0%	1	3%	4	11%	11	31%	20	56%	3.39	36	1
Category Total	0	0%	6	4%	8	5%	52	36%	80	55%	3.41	146	
2. Integrity													
5. Basic fairness and impartiality	1	3%	0	0%	2	5%	8	22%	26	70%	3.57	37	0
6. Equal treatment regardless of race	1	4%	0	0%	0	0%	4	17%	19	79%	3.67	24	13
7. Equal treatment regardless of gender	1	3%	0	0%	0	0%	5	16%	25	81%	3.71	31	6
8. Equal treatment regardless of religion	0	0%	0	0%	0	0%	3	14%	19	86%	3.86	22	15
9. Equal treatment regardless of national origin	0	0%	0	0%	0	0%	3	13%	20	87%	3.87	23	14
10. Equal treatment regardless of disability	0	0%	0	0%	0	0%	3	15%	17	85%	3.85	20	17
11. Equal treatment regardless of age	0	0%	0	0%	0	0%	4	17%	19	83%	3.83	23	14
12. Equal treatment regardless of sexual orientation	1	6%	0	0%	0	0%	3	17%	14	78%	3.61	18	19
13. Equal treatment regardless of economic status	1	3%	0	0%	0	0%	6	20%	23	77%	3.67	30	7
Category Total	5	2%	0	0%	2	1%	39	17%	182	80%	3.72	228	
3. Communication Skills													
14. Clear and logical oral communications and directions	0	0%	1	3%	2	5%	9	24%	25	68%	3.57	37	0
15. Clear and logical written decisions	1	3%	1	3%	4	11%	10	28%	20	56%	3.31	36	1

16. Gave all parties an adequate opportunity to be heard	1	3%	1	3%	1	3%	11	30%	23	62%	3.46	37	0
Category Total	2	2%	3	3%	7	6%	30	27%	68	62%	3.45	110	
4. Temperament													
17. Understanding and compassion	0	0%	1	3%	1	3%	10	27%	25	68%	3.59	37	0
18. Dignified	0	0%	1	3%	0	0%	9	24%	27	73%	3.68	37	0
19. Courteous	0	0%	1	3%	1	3%	9	24%	26	70%	3.62	37	0
20. Conduct that promoted public confidence in the court and judge's ability	0	0%	1	3%	0	0%	10	27%	26	70%	3.65	37	0
21. Patient	0	0%	1	3%	1	3%	12	32%	23	62%	3.54	37	0
Category Total	0	0%	5	3%	3	2%	50	27%	127	69%	3.62	185	
5. Admin Performance													
22. Punctual in conducting proceedings	0	0%	2	5%	2	5%	10	27%	23	62%	3.46	37	0
23. Maintained proper control over courtroom	0	0%	1	3%	0	0%	11	30%	25	68%	3.62	37	0
24. Prompt in making rulings and rendering decisions	1	3%	1	3%	1	3%	11	30%	23	62%	3.46	37	0
25. Was prepared for the proceedings	0	0%	1	3%	0	0%	12	33%	23	64%	3.58	36	1
26. Efficient management of the calendar	0	0%	3	8%	1	3%	10	28%	22	61%	3.42	36	1
Category Total	1	1%	8	4%	4	2%	54	30%	116	63%	3.51	183	
6. Settlement Activities													
27. Appropriately promoted or conducted settlement	0	0%	0	0%	1	5%	7	33%	13	62%	3.57	21	16
Category Total	0	0%	0	0%	1	5%	7	33%	13	62%	3.57	21	

Key: UN = Unsatisfactory PO = Poor SA = Satisfactory VG = Very Good SU = Superior

	UN		PO		SA		VG		SU		Mean	Total	No Resp
	Num.	Pct.	Num.	Pct.	Num.	Pct.	Num.	Pct.	Num.	Pct.			
1. Integrity													
1. Basic fairness and impartiality	6	19%	3	9%	3	9%	6	19%	14	44%	2.59	32	1
2. Equal treatment regardless of race	2	8%	1	4%	6	23%	4	15%	13	50%	2.96	26	7
3. Equal treatment regardless of gender	5	16%	0	0%	6	19%	6	19%	14	45%	2.77	31	2
4. Equal treatment regardless of religion	1	4%	1	4%	5	22%	5	22%	11	48%	3.04	23	10
5. Equal treatment regardless of national origin	1	4%	1	4%	5	21%	4	17%	13	54%	3.12	24	9
6. Equal treatment regardless of disability	1	4%	2	9%	6	26%	5	22%	9	39%	2.83	23	10
7. Equal treatment regardless of age	1	4%	1	4%	5	19%	6	23%	13	50%	3.12	26	7
8. Equal treatment regardless of sexual orientation	3	14%	0	0%	5	23%	4	18%	10	45%	2.82	22	11
9. Equal treatment regardless of economic status	4	16%	1	4%	4	16%	5	20%	11	44%	2.72	25	8
Category Total	24	10%	10	4%	45	19%	45	19%	108	47%	2.88	232	
2. Communication Skills													
10. Explained proceedings	5	16%	1	3%	5	16%	4	13%	16	52%	2.81	31	2
11. Explained reasons for delays	4	18%	3	14%	4	18%	2	9%	9	41%	2.41	22	11
Category Total	9	17%	4	8%	9	17%	6	11%	25	47%	2.64	53	
3. Temperament													
12. Understanding and compassion	7	22%	2	6%	3	9%	2	6%	18	56%	2.69	32	1
13. Dignified	3	9%	2	6%	6	19%	4	13%	17	53%	2.94	32	1
14. Courteous	6	19%	2	6%	3	9%	3	9%	18	56%	2.78	32	1
15. Conduct that promotes public confidence in the court	7	22%	2	6%	2	6%	3	9%	18	56%	2.72	32	1
16. Patient	4	13%	3	10%	3	10%	3	10%	18	58%	2.90	31	2
Category Total	27	17%	11	7%	17	11%	15	9%	89	56%	2.81	159	

4. Admin Performance														
17. Punctual in conducting proceedings	2	6%	3	9%	5	15%	5	15%	18	55%	3.03	33	0	
18. Maintained proper control of courtroom	2	6%	2	6%	4	12%	7	21%	18	55%	3.12	33	0	
19. Was prepared for the proceedings	3	9%	3	9%	3	9%	4	13%	19	59%	3.03	32	1	
Category Total	7	7%	8	8%	12	12%	16	16%	55	56%	3.06	98		